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Mason Carter  
J<sup>r</sup> 2<sup>nd</sup> -

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# MILITARY LAW.

BY

LIEUTENANT COLONEL W. WINTHROP,

DEPUTY JUDGE ADVOCATE GENERAL, U. S. ARMY,

AUTHOR OF THE ANNOTATED DIGEST OF OPINIONS OF THE JUDGE ADVOCATES GENERAL.

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## APPENDIX.



# MILITARY LAW.

## PART II.

### THE LAW OF WAR.

**Definition and Division of the Subject.** In PART I has been considered MILITARY LAW PROPER, or that law, almost wholly enacted or written, by which the Army is governed at all times, in peace as well as in war. As to a few particulars only—such as are referred to under Arts. 45, 46, 52, and the statute relating to the offence of the spy, for example—has the subject of the Law of War, now to be examined, been heretofore touched upon.

By the general term Law of War is intended those principles and usages which, in time of war, define the rights and obligations, and regulate the relations, not only of enemies—whether or not in arms—but also of persons under military government or martial law and persons simply resident or being upon the theatre of war, and which authorize their trial and punishment when offenders. Unlike military law proper, the law of war in this country is not a formal written code, but consists mainly of general rules derived from the Law of Nations, supplemented by acts and orders of the military power and a few legislative provisions. In general it is quite independent of the ordinary law. Finding its original authority in the war powers of Congress and the Executive, and thus constitutional in its source, the law of war may, in its exercise, substantially supersede for the time the Constitution and laws of the land<sup>1</sup>—as will be hereinafter illustrated.

Without entering upon discussions of questions which pertain

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1. See *New Orleans v. The Steamship Co.*, 20 Wallace, 393, cited under head of "Military Government—Magnitude of the power," *post*. And compare 1 Bishop, C. L. § 57; Whiting's War Powers, 49; Binney, "The Privilege of the Writ of Habeas Corpus."

to works on International Law, the present subject will be here considered principally with reference to the exercise of *military authority and jurisdiction* under the laws of war, as illustrated by the practice of our wars and especially that of the late civil war.

The subject will be divided as follows:—

- I. The law of war as affecting the rights of our own people.
- II. The law of war as affecting intercourse between enemies in general.
- III. The law of war as specially applicable to enemies in arms.
- IV. The status of Military Government, and the laws of war thereto pertaining.
- V. The status of Martial Law, and the laws of war applicable thereto.
- VI. Trial and punishment of offences under the law of war—the Military Commission.
- VII. Military authority and jurisdiction under the Reconstruction Acts of 1867.

## I. THE LAW OF WAR AS AFFECTING THE RIGHTS OF OUR OWN PEOPLE.

### **The Taking or Destruction of Personal Property.**

Whether and to what extent our armies, in advancing, retreating, or operating within our own territory, in time of war, may take or destroy private property is a question of *necessity*. Where there exists an urgent necessity or an immediate danger, the commander, (for such action cannot lawfully be initiated by an inferior,<sup>1</sup>) may be warranted in appropriating, for the use of his army, supplies, material, buildings, animals, vehicles, &c., required for its subsistence, shelter, transportation, &c., or for its defence against the enemy, or in seizing or destroying such or other property to prevent its falling into the hands of the enemy or being availed of by him for attack or defence. The circumstances, however, must be most urgent; the exigency immediate, not contingent or remote. Otherwise the taking, &c., is not a legitimate act of war, is not justified by the laws of war, and the commander giving the order and those acting under him are

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1. See *Terrill v. Rankin*, 2 Bush, 453; *Hogue v. Penn*, 3 Id., 663; *Bramer v. Felkner*, 1 Heisk. 228; *Worthy v. Kinamon*, 44 Ga. 297; *Huff v. Odom*, 49 Id. 395.



trespassers, and it is they, and not the United States, who are liable in damages to the injured party. The leading case on this subject in our law is that of *Harmony v. Mitchell*,<sup>1</sup> in which judgment was given against Lieut. Col. D. D. Mitchell, of Col. Doniphan's command, on account of the appropriation, at Chihuahua in 1847, during the war with Mexico, of horses, mules, wagons and goods belonging to the plaintiff, a trader, at a time when the same, though important for facilitating the operations of the army, were not necessary for its use, and were not in danger of falling into the hands of the enemy then more than two hundred miles distant and not advancing. The rule here laid down has been observed in repeated subsequent adjudications, especially in suits arising out of the late war, in the majority of which, however, the taking, &c., was held warranted by the circumstances of the exigency.<sup>2</sup>

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1. 1 Blatchford, 549. The judgment of \$90,806.44, damages, awarded upon the trial in the U. S. Circuit Court, was affirmed in the Supreme Court, (*Mitchell v. Harmony*, 13 Howard, 115;) the principle of the ruling being expressed by Taney C. J. as follows:—"There are without doubt occasions in which private property may lawfully be taken possession of, or destroyed to prevent it from falling into the hands of the public enemy; and also where a military officer, charged with a particular duty, may impress private property into the public service or take it for public use. Unquestionably, in such cases, the government is bound to make full compensation to the owner; but the officer is not a trespasser. But we are clearly of opinion that in all of these cases the danger must be immediate and impending; or the necessity urgent for the public service, such as will not admit of delay, and where the action of the civil authority would be too late in providing the means which the occasion calls for. It is impossible to define the particular circumstances of danger or necessity in which this power may be lawfully exercised. Every case must depend on its own circumstances. It is the emergency that gives the right, and the emergency must be shown to exist before the taking can be justified."

2. See *Holmes v. Sheridan*, 1 Dillon, 351, (a case of the taking of beef cattle from a contractor;) *Farmer v. Lewis*, 1 Bush, 66; *Dills v. Hatcher*, 6 Id., 606; *Bramer v. Felkner*, 1 Heisk. 228; *Yost v. Stout*, 4 Cold. 205; *Bryan v. Walker*, 64 No. Ca. 141; *Koonce v. Davis*, 72 Id. 218; *Wellman v. Wickerman*, 44 Mo. 484; *Bowles v. Lewis*, 48 Id. 32; *Williamson v. Russell*, 49 Id. 185—(cases of the taking of property mostly for the use of the army;) *Drehman v. Stifel*, 41 Mo. 184, (a case of the taking and occupying of a brewery as a means of defence of the city of St. Louis;) *Smith v. Brazelton*, 1 Heisk. 44; *Parham v. The Justices*, 9 Ga. 341—(cases of using land, timber, &c., for purposes of a camp or fortification;) *Stafford v. Mercer*, 42 Ga. 556; *Ford v. Surget*, 46 Miss. 130—(cases of destroying private cotton to prevent its falling into the hands of the enemy.) And see *Hawkins v. Nelson*, 40 Ala. 553; *Terrill v. Rankin*,

**Arrest of Persons.** This subject, so far as affected by the laws of war, belongs rather to the special Titles of Military Government and Martial Law—to be considered hereafter.

## II. THE LAW OF WAR AS AFFECTING INTERCOURSE BETWEEN ENEMIES IN GENERAL.

**Rule of Non-intercourse.** The principle here to be noticed is simply that of the absolute non-intercourse of enemies in war. As frequently reiterated in the rulings of the Supreme Court, not merely the opposed military forces but all the inhabitants of the belligerent nations or districts become, upon the declaration or initiation of a foreign or civil war,<sup>1</sup> the enemies both of the adverse government and of each other,<sup>2</sup> and all intercourse between them is terminated and interdicted.<sup>3</sup> In special cases—by the authority, in our wars, of legislation of Congress, or, in the absence of legislation, of a license from the President as Commander-in-chief<sup>4</sup>—

2 Bush, 453; Sellards *v.* Zomes, 5 Id. 90; Taylor *v.* Jenkins, 24 Ark. 342; Thomasson *v.* Glisson, 4 Heisk. 615; Clark *v.* Mitchell, 64 Mo. 564.

1. As to what constitutes such declaration or initiation, see *ante*, "Fifty-Eighth Article," Vol. I, p. 957.

2. Vattel, 321; Manning, 166; Dana's Wheaton § 345; 1 Kent, Com., 55; Halleck, 357; Jecker *v.* Montgomery, 18 Howard, 112; White *v.* Burnley, 20 Id., 249; Prize Cases, 2 Black, 666; Mrs. Alexander's Cotton, 2 Wallace, 274; The Venice, Id., 418; Coppell *v.* Hill, 7 Id., 542; Texas *v.* White, Id., 700; Lamar *v.* Browne, 92 U. S., 194; Ford *v.* Surget, 97 Id., 594; Dow *v.* Johnson, 100 Id., 164. "In the state of war nation is known to nation only by their armed exterior; each threatening the other with conquest or annihilation. The individuals who compose the belligerent States exist, as to each other, in a state of utter occlusion. If they meet, it is only in combat. War strips man of his social nature." The Rapid, 8 Cranch, 160. (Johnson, J.)

3. "Interdiction of trade and intercourse, direct or indirect, is absolute and complete by the mere force and effect of war itself." Prize Cases, 2 Black, 688. And see the other authorities cited in last note; also Woolsey § 117; Schooner *v.* Patriot, 1 Brock, 421; The Julia and Cargo, 1 Gallison, 603; The Sea Lion, 5 Wallace, 630; The Oachita Cotton, 6 Wallace, 521; Hanger *v.* Abbott, Id., 535; McKee *v.* U. S., 8 Id., 163; U. S. *v.* Lane, Id., 195; U. S. *v.* Grossmayer, 9 Id., 72; Montgomery *v.* U. S., 15 Id., 395; Hamilton *v.* Dillin, 21 Id., 73; Mitchell *v.* U. S., Id., 350; Desmare *v.* U. S., 93 U. S., 612; Brown *v.* Hiatt, 1 Dillon, 372.

4. The Act of July 13, 1861, c. 3, s. 5, which supplemented the law of war by specifically interdicting commercial intercourse with the insurrectionary States, authorized the President in his discretion to license such

certain trade or communication may be permitted, but such permits are exceptions and are to be strictly construed.<sup>1</sup> The rule is that, pending the war, all domestic, social, and business relations are forcibly severed; all interchange, however personal and intrinsically harmless, is forbidden; no new contracts or engagements can be entered into; existing partnerships and joint undertakings are dissolved and existing pecuniary obligations are suspended.<sup>2</sup>

**Enforcement and Violation of the Rule.** The drawing of strict army lines, the patrolling, with troops or armed vessels, of the territory, rivers, &c., intervening between the belligerents, and the establishment of military posts upon main routes of travel and of blockades of important ports, while measures defensive and offensive as against the hostile forces, are also efficient means for the enforcement of this rule of non-intercourse. Infractions of this rule, by selling to, buying from, or contracting with enemies, furnishing them with supplies, corresponding, mail carrying, passing the lines without authority, &c., are *violations of the laws of war*, more or less grave in proportion as they render material aid or information to the enemy or attempt to do so, and, as will hereafter be illustrated, are among the most frequent of the offences triable and punishable by *military commission*.

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intercourse in particular instances when deemed conducive to the public interests. And see *McKee v. U. S.*, 8 Wallace, 163; *Coppell v. Hill*, 7 Id., 54, in which it was held that a commander of a military department was not authorized to give a license.

[As to communication between armies by *flag of truce*, see under Title III.]

1. See *McClelland v. U. S.*, 21 Wallace, 98; *Cutner v. U. S.*, 17 Id. 617; *Millar v. U. S.*, 8 Ct. Cl. 487; *Cone v. U. S.*, Id., 421. It was provided in the Act of July 13, 1861, that where commercial intercourse was licensed by the President, it should be carried on "only in pursuance of rules and regulations prescribed by the Secretary of the Treasury."

2. *Hoare v. Allen*, 2 Dallas, 102; *Foxcraft v. Nagle*, Id., 132; *Manning*, 176. As to the unlawfulness of the act of drawing bills by or upon enemies during the late war, see *Britton v. Butler*, 9 Blatchford, 457; *Williams v. Mobile Sav. Bk.*, 2 Woods, 501; *Woods v. Wilder*, 43 N. Y. 164; *Lacy v. Sugarman*, 12 Heisk. 354. That exceptions to the general rule stated in the text may be admitted in cases of prisoners of war drawing bills for subsistence furnished them by enemies, (or for their ransom,) see *Antoine v. Morshead*, 6 Taunton, 237; Halleck, 359; *DIGEST*, edit. of 1868, p. 292.

### III. THE LAW OF WAR AS SPECIALLY APPLICABLE TO ENEMIES IN ARMS.

**Rights and Obligations of Warfare in general.** While the laws and usages of civilized warfare, which constitute the main code of restraint and government as between opposing armies, authorize the killing or disabling of members of the one army by those of the other, in battle or hostile operations, by the ordinary and approved weapons, the capture and holding or paroling of individuals of the enemy's forces as prisoners of war, the practising of stratagems and deceptions which do not involve treachery or perfidy, the capture of enemy's property in general and its destruction where required in hostile operations,—the same laws and usages also impose obligations correlative to these rights or incident to their exercise, a violation or disregard of which may constitute a grave military offence.

**Illegal Warfare—Killing, &c., of non-combatants.** Thus it is forbidden by the usages of civilized nations, and is a crime against the modern law of war, to take the lives of, or commit violence against, non-combatants and private individuals not in arms, including women<sup>1</sup> and children<sup>2</sup> and the sick, as also persons taken prisoners or surrendering.<sup>3</sup> Soldiers committing such offences forfeit their right to be treated as belligerents and become liable to capital punishment as violators of the laws of war. A marked instance of a conviction—as published in the General Orders of the War Department during the late war—of the unlawful taking of the life of a sick and helpless enemy, and after he had practically surrendered, was that of the killing of Brig. Gen. Robert L. McCook, in Alabama in 1862, a crime for which the death penalty was adjudged the offender by a military commission.<sup>4</sup>

1. A grave instance of this crime, consisting in the outraging of women, was that committed by the British forces, at the capture of Hampton, Va., in July, 1813. See Report of Com. of the Ho. of Reps., of July 31, 1813, *Am. State Papers, Mil. Affairs*, vol. I, pp. 375–381.

2. In Art. 5, (Sec. V.) of the Articles of Charles I, (taken from Art. 97 of Gustavus Adolphus,) it is prescribed that—"No man shall presume to \* \* \* tyrannize over any churchmen, schollers, or poore people, women, maides, or children, upon paine of death, or other such punishment as in a strict Councell of Warre shall be awarded."

3. Dana's *Wheaton* § 343; Halleck, 426, 429; Lieber, *Inst.* § 22, 37, 44.

4. G. C. M. O. 505 of 1865. [The sentence in this case, however, was subsequently in effect remitted by an order directing that the offender be held as a prisoner of war. See G. C. M. O. 204 of 1866.] Compare *State v. Gut*, 13 Min. 341.

**Right of Capture of Property—Its Limitations.** By the law of war, the army of one belligerent may seize and appropriate not only the public property of the other belligerent, but also the private property of individual enemies. This right, however, has been qualified in its exercise by the law of nations, and private property is in general regarded as properly exempt from seizure except where appropriate for military use or of a hostile character.<sup>1</sup> In our late civil war the capture of private property of enemies (valuable or useful for public purposes) was authorized "without regard to the status of the owner,"<sup>2</sup> and it was declared to be the duty of the military, as of the naval forces at sea, to take and hold such property on behalf of the government.<sup>3</sup> In deference, however, to "the humane maxims of the modern law of nations which exempts private property of non-combatant enemies from capture as booty of war,"<sup>4</sup> Congress by special legislation, during the war,<sup>5</sup> provided for the conversion of all captured private property into money and its deposit in the Treasury, subject to the claims of the original owners and their recovery of the same on proof of loyalty.

The species, indeed, of private property which was mainly the subject of captures, and which was chiefly disposed of under this statute, was *cotton*, which, constituting as it did the main resource of the enemy for the prosecution of the war, was held to be clearly

1. See Dana's Wheaton, § 346; 1 Kent, Com., 91; Woolsey § 129; Halleck, 456; U. S. v. Klein, 13 Wallace, 137; Dow v. Johnson, 100 U. S., 167; Gates v. Goodloe, 101 Id., 612.

2. Lamar v. Browne, 92 U. S., 194. "What shall be the subject of capture, as against the enemy, is always within the control of every belligerent." Id., 187.

3. Lamar v. Browne, *ante*, 187, 194, 196. In an "Executive Order," dated "War Department, Washington, July 22, 1862," it was ordered, among other things, as follows:—"That military commanders within the States of Virginia, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas and Arkansas, in an orderly manner, seize and use any property, real or personal, which may be necessary or convenient for their several commands for supplies, or for other military purposes; and that while property may be destroyed for proper military objects, none shall be destroyed in wantonness or malice." And see G. O. 154, Army of the Potomac, 1862, containing directions for carrying out this Order.

4. U. S. v. Klein, *ante*; Lamar v. Brown, *ante*, 194.

5. The Act of March 12, 1863, known as the "Captured and Abandoned Property Act."

*hostile property*—"as much so as the military supplies and munitions of war it was used to obtain."<sup>1</sup>

But all the captures recognized as legitimate in our law and practice have been captures for, and by the authority of, the United States. No taking for private use or gain has been allowed,<sup>2</sup> but such taking has been regarded as a grave military offence in violation of the 42d or other Article of war. The spoil or booty sometimes permitted to European armies, of property seized on the battle-field or at the storming of a fortified place,<sup>3</sup> would not be recognized as legal in our law,<sup>4</sup> but property thus captured would be considered as within the spirit if not the letter of the 9th Article which provides that stores taken from the enemy shall accrue to the United States.<sup>5</sup>

The subject of the exacting of money or other private property of enemies, by way of *contribution* to the support of the government or army, or of *indemnity* to individuals, will be more appropriately considered under the Title of Military Government.

**Destruction of Property of the Enemy.** This may be resorted to by the army where necessary or expedient in the due

1. *Whitfield v. U. S.*, 92 U. S., 170. "That cotton, though private property, was a legitimate subject of capture is no longer an open question in this court. *U. S. v. Anderson*, 2 Wallace, 404; *U. S. v. Padelford*, 9 Id. 540; *Haycraft v. U. S.*, 22 Id. 81. It was the foundation on which the hopes of the rebellion were built. It was substantially the only means which the insurgents had of securing influence abroad. In the hands of private owners, it was subject to forced contributions in aid of the common cause. Its exportation through the blockade was a public necessity. Importing and exporting companies were formed for that purpose. It is not too much to say that the life of the Confederacy depended as much upon its cotton as it did upon its men. If they had had no cotton, they would not have had, after the first year or two, the means to support the war. To a very large extent it furnished the munitions of war and kept the forces in the field. It was therefore hostile property and legitimately the subject of capture in the territory of the enemy." Waite C. J., in *Lamar v. Browne*, 92 U. S., 194. And see *Mrs. Alexander's Cotton*, 2 Wallace, 404; *Radich v. Hutchins*, 95 U. S., 213; *Young v. U. S.*, 97 Id., 58. In *Coolidge v. Guthrie*, Flippin, 97, it was held that an action would not lie against a military officer for the taking of cotton *jure belli*.

2. *U. S. v. Klein*, *ante*; *Lamar v. Browne*, *ante*; *Decatur v. U. S.*, *Devereux*, 110; *Bramer v. Felkner*, 1 Heisk. 228; Halleck, 462-4.

3. See Vattel, (Chitty's edition,) 366; Dana's Wheaton § 346; 1 Kent, Com., 92; Halleck, 457, 462.

4. See *Witherspoon v. Farmers' Bk.*, 2 Duvall, 497.

5. See under this Article in Chapter XXV.

course and prosecution of hostile operations, but not in general otherwise. The usages of civilized nations not only exempt public institutions of a civil character such as State houses, court houses, churches, asylums, colleges, museums and the like from the operations of war,<sup>1</sup> but forbid *any* wanton or malicious destruction of property, public or private.<sup>2</sup> The burning of isolated private dwellings or buildings may, in rare and exceptional cases, be excused by an emergency of war, but the firing of a town or village, unless accidentally caused by its being involved in an engagement or other legitimate hostile operation, is an act of inexcusable vandalism and a grave crime in violation of the laws of war. Such, in the opinion of American writers,<sup>3</sup> was the burning of a portion of Washington, including the Capitol and President's House, by the British forces in 1814; and such would appear to have been the burnings or partial burnings of towns in some instances during the late civil war.<sup>4</sup>

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1. Vattel, 368; Halleck, 456; Dana's Wheaton § 346; also Christian Co. Ct. v. Rankin, 2 Duvall, 502, a case in which two confederate soldiers were held liable in damages for assisting, though under the orders of a superior, in the destruction by burning of the court-house of Christian County, Ky.

2. Compare Executive Order of July 22, 1862, cited *ante*. Note also Arts. 97 and 98 of the Code of Gustavus Adolphus, (and Art. 5, Sec. V, of Charles I, derived therefrom,) making punishable the firing or despoiling of churches, hospitals, schools, colleges and mills.

3. Halleck, 456; Woolsey, § 131; Dana's Wheaton, § 351. And see opinion of the Court of Inquiry in the case of Brig. Gen. W. H. Winder, of February, 1815. The act was emphatically denounced at the time in the British House of Commons by Sir James Mackintosh. Hansard, Parl. Deb., vol. XXX, 526.

4. As, for example, the burning and plundering of Chambersburg, Pa., July 30, 1864: see the full account in Moore's Rebellion Record, vol. 11, pp. 537-544. As to the burning of Columbia, So. Ca., on February 17, 1865, it is the conclusion of the author, upon the testimony, that this cannot fairly be fixed upon any responsible commander of either the Federal or the Confederate army, but was probably the work of irresponsible persons—soldiers or others. On this question the student may be referred to the printed "Testimony," in the State Department, of the "British and American Mixed Commission," vol. XIV, Claims 103, 292, &c.; Howard's Report on British-American Claims, pp. 49, 433-512; Gen. Sherman's Report on the Campaign of the Carolinas, of April 4, 1865; Letter from Gen. Hampton to Hon. Reverdy Johnson, U. S. Senate, of April 21, 1866, published in the "Southern Historical Papers," vol. VII, pp. 156-158; Paper by Col. Jas. Wood Davidson, in same vol., p. 185; also Papers in vol. 9, p. 202, vol. 10, p. 109, and vol. 12, p. 233, of the "Southern Historical Society."

**Right of retaliation.** For all such infractions of the law of war the responsible parties may, if captured, be tried and punished. The usual remedy, however, of a belligerent, whose citizens have suffered from captures or destruction of property, exactions of contributions, or other severity, is *retaliation*. But the right of retaliation will not justify a resort to means or measures repudiated by civilized warfare.<sup>1</sup>

**Guerilla Warfare.** The unlawful taking of life or property in our wars has, in the majority of cases, been the act of armed enemies, not commissioned, enlisted, or duly employed in the military service of the enemy, but acting independently—singly or in bands—and usually within districts of the enemy's country, occupied or invaded by our armies, or in contiguous portions of our own territory. Such parties, in the killing, wounding, robbery, &c., of peaceable citizens or of soldiers, or the seizure, burning, or otherwise destroying of private property, or of munitions of war, means of transportation, &c., of our army, are, whether

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1. See Halleck, 444, 445; also G. O. 49, Dept. of the Mo., 1862, cited in full, *post*. A form of indirect retaliation is sometimes practised by the seizing of subjects of the enemy as *hostages*, and holding them in confinement till indemnity is furnished for wrong done, or till offenders are surrendered for trial, &c. See Halleck, 673; G. O. 4, Div. of the Miss., 1863.

As to retaliation for improper treatment of *prisoners of war*, see *post*.

It may here be noted that, in the opinion of the author, the soundest, under the law of war, of the grounds advanced for the trial and sentence of the so-called "Emperor" Maximilian of Mexico, was his decree of Oct. 3, 1865, to the effect that all *juarists*, *i. e.* supporters of the existing republican government, taken with arms in their hands, should be treated as bandits. (See D'Hericault, "Maximilien et Le Mexique," pp. 310, 335-6.) His own treatment, therefore, by the government of Juarez, when, after the departure of the French army, it came into power, was but a form of *retaliation*. It may be added that, upon the capture of Maximilian with his generals Miramon and Mejia, the U. S. Government made some attempt to induce their being treated as prisoners of war. Its dispatch on the subject, (Mr. Seward, Sec. of State, to L. D. Campbell, Minister, April 6, 1867,) was, however, never actually presented.

In connection with the subject of retaliation, the student may be referred to G. O. 54, 59, 60, III, A. & I. G. O., Richmond, 1862, in which the Government of the Confederate States authorized and directed retaliatory proceedings on account of action taken by certain federal commanders in the late war; also Joint Resolution of the Confederate States Congress, "on the subject of retaliation," of May 1, 1863, incited mainly by the Proclamations of the President of the United States, in reference to the emancipation of the slaves, of Sept. 22, 1862, and Jan. 1, 1863.



actuated by hostility, revenge, or a desire of personal profit, in general to be regarded as criminals and outlaws, not within the protection of the rights of war, or entitled, upon capture, to be treated as prisoners of war, but liable to be shot, imprisoned, or banished, either summarily where their guilt is clear or upon trial and conviction by military commission. Numerous instances of trials, for "violation of the laws of war," of offenders of this description, termed *guerilleros* in the war with Mexico,<sup>1</sup> and principally known during the late civil war as *guerillas*,<sup>2</sup> are contained in the General Orders especially of the latter period.<sup>3</sup>

1. In G. O. 372, Hdqrs. of Army, 1847. After the battle of Cerro Gordo, guerilla warfare became in fact a systematic mode of prosecuting hostilities sanctioned by the Mexican government. Compare Halleck, 438.

2. Called "guerilla-marauders" in the Act of July 2, 1864, c. 215, and the 105th Article of war. They were also styled, in different localities, "bushwhackers," "jayhawkers," "regulators," &c. Prof. Lieber, (Inst. § 82, 84,) refers to them as "highway robbers or pirates" and "armed prowlers." In his "Guerilla Parties," Miscellaneous Writings, vol. 2, p. 277, he more fully defines this class, distinguishing them from *partisans*, &c.

It may here be noted that an act "to organize Bands of Partizan Rangers" was passed by the Congress of the late Confederate States on April 21, 1862. But whether because their character as partisan troops was not sufficiently recognized by the federal forces, or because the service was found to be demoralizing, or for other reason, the Act was repealed by an Act of Feb. 17, 1864, by which also all such existing bands were authorized to be incorporated into the regular "Provisional Army."

3. Some of the more marked of the numerous cases of Guerillas, sentenced to death for homicides or other violence in the late war, are found in G. O. 135, 267, 382—of 1863; Do. 23, 41, (six cases,) 52, 62, 71; G. C. M. O. 87, 93, 98, 110, (eight cases,) 153, 198, (Jessie A. Broadway,) 202, 208, 209, 210, 211, 215, 216, 218, 219, (Jourdan Moseley,) 246, 250, 276, 302—of 1864; Do. 51 of 1866; G. O. 93, Dept. of the Ohio, 1864, (seven cases;) Do. 32, Northern Dept., 1865; Do. 51, Dept. of the Mo., 1864, (John D. Mulkey;) Do. 12, Dept. of Tenn., 1865, (Champ Ferguson;) Do. 7, Id., 1866; Do. 22, Dept. of the Tenn., 1865; G. C. M. O. 3, Dept. of Ky., 1865, (Jerome Clark *alias* Sue Mundy;) Do. 4, Id., Do. 24, Id., (Tobe Long *alias* Columbus M. Biassee;) Do. 26, 27, Id.; Do. 108, Id., (Henry C. Magruder;) Do. 11, Id., 1866, (Samuel O. Berry.)

Among the principal cases of persons of this class capitally sentenced for the seizure, burning, or destruction, of steamboats, buildings, railroad trains and bridges, telegraph lines, &c., were those of Robt. Loudon, (G. O. 41 of 1864,) Wm. Murphy, (G. C. M. O. 107 of 1866,) John Y. Beall, (G. O. 14, Dept. of the East, 1865,) Robt. C. Kennedy, (Do. 24, Id.,) T. E. Hogg, (Do. 52, Dept. of the Pacific, 1865;) also cases in G. O. 12, 15, 19, Dept. of the Mississippi, 1862.

In this connection may also be noted the following Orders in which

**Use of illegitimate weapons or means.** An illegitimate weapon of war would be one which, in disabling or causing death, inflicted a needless, unusual and unreasonable amount of torture or injury, and the deliberate use of such a weapon would properly be treated as a violation of the laws of war. So the employment of an insidious means which cannot be guarded against, as *poison* in the infecting of wells, food, &c., is universally condemned by the authorities as wholly interdicted by the usages of civilized belligerents.<sup>2</sup> A poisoning by the enemy of provisions abandoned by them in evacuating a military post in Arkansas in 1862, as a result of which lives were destroyed, is commented upon by Maj. Gen. Halleck in a General Order, as a grave instance of unlawful warfare.<sup>3</sup>

**Stragem and Deception.** Though it is permitted to surprise and prevail over the enemy by feints, pretended retreats or other movements, false signals, fictitious dispatches allowed to

guerilla warfare is especially denounced by Department Commanders : G. O. 13, Dept. of the Mo., 1861; Do. 30, Id., 1863; Do. 13, Dept. of Kans., 1862; Do. 23, Id., 1864; Do. 19, Dept. of the Cumberland, 1862; Do. 56, Dept. of W. Va., 1865; Circ., Id., Dec. 9, 1864; G. O. 7, Dept. of the South, 1866; Do. 17, Id., 1867; G. C. M. O. 90, W. D., 1866; Do. 28, Dept. of Ky., 1865.

1. Woolsey § 127; Dana's note to Wheaton § 343. In Jenkins' History of the Mexican War, (p. 240,) it is said that "most of the balls used by the Mexicans," (opposed to Gen. Taylor's army,) "were of copper and very poisonous in their effect, especially in that warm climate."

2. Vattel, 361; Woolsey § 127; Dana's Wheaton § 343; Halleck, 399; Lieber, Inst. § 70.

3. "Forty-two officers and men of one of our regiments were poisoned by eating these provisions. One brave officer and several men have died, and others have suffered terribly from this barbarous act—an act condemned by every civilized nation, ancient and modern. We cannot retaliate by adopting the same barbarous mode of warfare; nor can we retaliate by punishing the innocent for the acts of the guilty. The Laws of War forbid this. But the same code authorizes us to retaliate upon the guilty parties. Any persons guilty of such acts, when captured, will not be treated as ordinary prisoners of war; they will not be shot, but will suffer the ignominious punishment of being hung as felons. Moreover, all officers are, in a measure, responsible for the acts of the troops under their command. Officers of troops guilty of such acts, although not themselves the advisers or abettors of crime, will, therefore, when captured, be put in irons, and conveyed as criminals to these Head Quarters. The Laws of War make it their duty to prevent such barbarities; if they neglect that duty they must suffer the consequences." G. O. 49, Dept. of the Mo., 1862.

be discovered or intercepted, and the like, a resort to secret and treacherous means, which cannot be guarded against by ordinary vigilance, is not permitted by the law of war. Thus it is held not to be a lawful *ruse de guerre* to deceive an enemy by being disguised in the uniform of his army; and soldiers captured, when so disguised, within the lines of the opposing forces, are not entitled to quarter but may be shot without trial,<sup>1</sup> or, if tried, be sentenced to death in the same manner as spies.<sup>2</sup> The offence of the spy, heretofore considered, is itself a marked instance of a prohibited act of this class.

**Secretly Entering the Lines.** Similar to the violation of the laws of war committed by the *spy* is that of officers, soldiers, or agents of the enemy, coming secretly within our lines or into country occupied and held by our forces, for any unauthorized purpose, as, for example, for the purpose of recruiting for their army, obtaining horses or supplies for the same, holding unlawful communication, &c.,—a class of offences of which instances were not unfrequent in the border States during the late war.<sup>3</sup>

**Abuse of a Flag of Truce.** A bearer of a flag of truce who employs the same for an illegitimate purpose, as for the purpose of observing the enemy's position, numbers, &c.; or who, having been halted with his flag outside the lines, obtains access within them by making false representations; or, when admitted within the lines, abuses his privilege by false statements, secret communications, taking notes, &c., is liable to be arrested and tried under the laws of war, or, in a clear case, to be shot without trial.<sup>4</sup> Trials for this offence have been rare in practice.<sup>5</sup>

1. G. O. 16, Dept. of the Cumberland, 1863; Do. 10, Dept. of the Tenn., 1863; Lieber, Inst. § 63, 101. And see Id. § 65, as to the use of the enemy's flag, or other emblem of nationality, for the purpose of deceiving him in battle. That it is against the law of war to employ assassins against an enemy, see Woolsey § 127; Halleck, 400; Dana's note to Wheaton § 343.

2. See cases in G. C. M. O. 110, 250, of 1864.

3. See cases of recruiting by enemies within our lines in violation of the laws of war, in G. O. 114, 397, of 1863; G. C. M. O. 155, 249, of 1864; Do. 4 of 1866; G. O. 18, 34, 43, 44, 45, Middle Dept., 1864; Do. 25, Dept. of the Mo., 1864; Do. 153, 200, Dept. of the Ohio, 1863.

4. As to the purpose and use of flags of truce, see Halleck, 674; Lieber, Inst. § 111-114; G. O. 16, Dept. of the Cumberland, 1862; Do. 42, Dept. of the Gulf, 1863; Army Regs., par. 1133.

5. See a case in G. O. 5, Dept. of W. Va., 1864, in which an officer

**Violation of a Truce.** This offence may consist in an act in contravention of the terms of the truce as agreed to, or in an act wholly inconsistent with the truce status. In the Mexican war, (1847,) a violation of the laws of war was, as claimed by Gen. Scott, committed by Santa Anna, in his strengthening the defences of the city of Mexico, during an armistice and in disregard of one of its expressed conditions.<sup>1</sup>

A gross instance of a breach of the laws of war would be the taking advantage of a temporary truce between the armies to seize or kill individuals of the enemy or make an attack upon his forces. Of this class was the offence of the Modoc Indians, who during a truce and conference between their tribe and our army in the course of hostilities in Northern California, in April, 1873, took the lives of Brig. Gen. Canby and Rev. E. Thomas, a "peace commissioner." Of this crime Atty. Gen. Williams observes:—"All the laws and customs of civilized warfare may not be applicable to an armed conflict with the Indian tribes upon our Western frontiers, but the circumstances attending the assassination of Canby and Thomas are such as to make their murder as much a violation of the laws of savage as of civilized warfare, and the Indians concerned in it fully understood the baseness and treachery of their act."<sup>2</sup>

**Improper Treatment of Prisoners of War.**<sup>3</sup> The laws and usages of civilized warfare require that prisoners of war shall

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of the confederate army was charged with violating a flag of truce by exhibiting such a flag on the south side of the Potomac at Harper's Ferry, in February, 1862, and thus inducing the flag of truce boat to be sent across the river in charge of a U. S. military employee, whom he thereupon caused to be fired upon and killed. The accused was convicted and sentenced to be hung. The proceedings, however, were disapproved by the reviewing authority on the ground that the personal guilt of the accused was not sufficiently established, and he was ordered to "be reported to the Commissary General of Prisoners as a prisoner of war."

1. Scott's Autobiography, 504.
2. XIV Opins., 249. These Indians were all sentenced to be hung: the sentences were executed in the cases of Captain Jack, the chief, and three others, and in the two other cases commuted to imprisonment for life. G. C. M. O. 32 and 34, of 1873.
3. While persons who engage in armed rebellion are not *entitled* to the rights of war, (Halleck, 333,) yet, in view of the extent and formidable character of the rebellion of 1861-6, and to prevent reprisals and retaliation, belligerent rights in general, (including the right of being

be treated by the captor with humanity, shall be allowed to retain or be furnished with necessary and proper clothing, and shall receive the necessary subsistence, protection from the elements and care in illness. Harsh measures can in general be justified only when essential to prevent escape or repress violence or insubordination. A prisoner of war is not, *as such*, liable to *punishment*,<sup>1</sup> and cannot be subjected to loss of life, close confinement or other penal severity, except under circumstances of extreme exigency.<sup>2</sup> Where a captive entitled to be treated as a prisoner of war is put to death, or where unlawful, unreasonably harsh,

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held and treated as prisoners of war, upon capture,) were fully extended to the forces of the insurrectionary States by the United States Government. *Williams v. Bruffy*, 96 U. S., 77; *Ford v. Surget*, 97 Id., 594; *Dow v. Johnson*, 100 U. S., 164. And see *Brown v. Hiatt*, 1 Dillon, 372; *Phillips v. Hatch*, Id., 571; *U. S. v. Wright*, 5 Philad. 299.

1. As to their liability *as criminals* for offences committed before or after capture, see *post*.

2. As to the treatment in general of prisoners of war, see Vattel, 353; Manning, ch. VIII; Woolsey § 128; Halleck, 430, 437; Lieber, Inst. § 56, 72-80; G. O. 190 of 1864; Do. 23, Dept. of Kans., 1864; Circ., Office, Com. Gen. of Prisoners, April 20, 1864. And see Army Regulations, § 1297, 1298, 1302, 1305, 1309. In 1 Jour. Cong., 404, the Continental Congress denounces the killing of our soldiers, when surrendered as prisoners of war, by Indians in the service of the British, near Montreal, in May, 1776, as a "gross and inhuman violation of the laws of nature and nations." A similar crime, in the instance of the massacre of American prisoners of war, taken at the River Raisin, Ky., in January, 1823, by the British forces under Col. Proctor, is especially denounced in the Report of the Committee of the Ho. of Reps., dated July 31, 1813, published in American State Papers, Military Affairs, vol. I, p. 339. And see Brackenridge, Hist. War of 1812, pp. 91-93. On the other hand, Marion's men, of the American army in the Revolutionary war, are charged, (in common with their opponents,) with taking the lives of prisoners of war captured by them, "even contrary to agreements of surrender." Simm's Life of Marion, 165, (cited by Prof. Lieber in his "Guerilla Parties.")

If the captor is without the means of subsisting his prisoners, he should release them on parole. (See Vattel, 354; Halleck, 439.) Unless indeed some arrangement exists between the belligerents by which it is agreed or understood that the one shall supply the prisoners of war in his hands with "the necessary comforts" at the expense of the other.

When a prisoner captured from the enemy is recognized as a deserter from our army, he may, by the law of war, be summarily shot without trial. (See Woolsey § 128; Lieber, Inst. § 48.) Prisoners of war may also be tried and punished for crimes or offences committed while they are held as prisoners,—as for the killing of fellow-prisoners, (G. O. 79, 83, Northern Dept., 1864;) or the bribing of a guard with a view to effecting an escape, (G. O. 38, Dept. of the Mo., 1862.)

or cruel, treatment of prisoners is practised or permitted by one belligerent, the other may, as far as legally permissible, *retaliate*;<sup>1</sup> and any individual officer resorting to or taking part in such act or treatment is guilty of a grave violation of the laws of war, for which, upon capture, he may be made criminally answerable.<sup>2</sup> Two leading examples of such jurisdiction in our late war were the cases of Captain Henry Wirz<sup>3</sup> of the confederate army, and his employee James W. Duncan,<sup>4</sup> who, on being themselves taken prisoner at the end of the war, were brought to trial by military commission, respectively at Washington in the fall of 1865 and at Savannah in March, 1866, for cruel treatment and unlawful killing of prisoners of war under their charge at Andersonville, Georgia, and, on conviction, were sentenced, the one to be hung, and the other to imprisonment at hard labor for fifteen years. In a third case, that of Major John H. Gee of the same army,<sup>5</sup> tried at Raleigh, No. Ca., in 1866, by military commission, for violation of the laws of war in failing to take proper care of the federal prisoners of war in his charge at Salisbury, No. Ca., in 1864, and in causing the death of several of the same, the accused was fully acquitted.

While the general rule as to the treatment of prisoners of war is as above set forth, it is to be noted that such prisoners "remain always responsible for penal crimes committed before the capture"<sup>6</sup> and within the military jurisdiction.

**Violation of Parole by Prisoner of War.** A breach of his parole by a paroled prisoner of war is a violation of the laws of war rendering him liable to the punishment of death.<sup>7</sup> The

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1. Thus, in our Revolutionary War, when the British proposed to treat Maj. Gen. Charles Lee, on his being taken prisoner, as a deserter from their army, Congress caused a Lieut. Col. of that army, and five Hessian field officers, prisoners of war in our hands, to be placed in close confinement, to await the action taken in the case of Gen. Lee.

2. Lieber, Inst. § 59.

3. G. C. M. O. 607 of 1865; Ex. Doc. 43, Ho. of Reps., 40th Cong., 2d Sess.

4. G. C. M. O. 153 of 1866.

5. Not published in any General Orders.

6. Lieber, "Status of Rebel Prisoners of War," Miscellaneous Writings, vol. 2, p. 297.

7. Lieber, Inst. § 124. In *U. S. v. Wright*, 5 Philad. 299, it was held that his parole was binding upon a prisoner of war, though a *mi-*

offence, which was a rare one during the late war,<sup>1</sup> was so frequent during the war with Mexico that offenders were publicly threatened with hanging by General Scott, and the signing of the parole was required to be accompanied by the taking of a religious oath.<sup>2</sup> The engagement of the parole is usually to the effect that the prisoner will not serve actively in the field during the pending war unless duly exchanged. He may in general, in the absence of specific stipulation to the contrary, legally perform "internal service such as recruiting or drilling recruits,"<sup>3</sup> garrisoning posts not on the theatre of war, and—as it is declared in a General Order issued during the last war with Great Britain—"guarding stores and provisions of war in the interior," and "paying the troops and making purchases on account of the United States."<sup>4</sup> In the official *cartel*, however, agreed upon between the United States and the Confederate States during the late war,<sup>5</sup> it was, more strictly, prescribed that paroled prisoners should "not be permitted to take up arms again, nor to serve as military police or constabulary force in any fort, garrison, or field work held by either of the respective parties, nor as guards of prisons, depôts or stores, nor to discharge any duty usually performed by soldiers," or any "field duty,"—until exchanged.<sup>6</sup> Under this cartel it was held by the Attorney General that the United States government would not be authorized to employ paroled prisoners

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*nor*; that the fact of his minority did not entitle him to be discharged from military custody before his exchange. And see *Lockington's Case*, *Brightly*, 276.

1. See cases in G. C. M. O. 110 of 1864; G. O. 36, Dept. of the Gulf, 1862, (case of six prisoners sentenced to death, and shot accordingly, for violating their parole by rendering service to the enemy;) Do. 6, Middle Mil. Dept., 1865; Do. 71, Dept. of La., 1865. In S. O. 231, Dept. of the Gulf, 1862, the parole of a prisoner of war is "*revoked*" on account of his having conducted a hostile newspaper.

2. Ex. Doc., No. 56, 1st Sess. H. R., 30th Cong.; Halleck, 438. The offence was a not uncommon one in the Mexican war, on the part of Mexican officers, several of whom were tried and sentenced to death therefor. See XIV Opins. At. Gen., 251.

3. Lieber, *Inst.* § 130.

4. G. O. Feb. 14, 1814. And see Do. 13, Dept. of the Mo., 1861; *DIGEST*, 394.

5. Published in G. O. 142 of Sept. 25, 1862.

6. As to the engagement of the parole and the form of a cartel, see *Army Regulations* § 1314, 1318. The sacredness of the obligation of the cartel, "for the fulfillment of which the national faith is pledged," is indicated in *U. S. v. Wright*, 5 Philad. 599.

in repelling an invasion or suppressing an outbreak of hostile Indians.<sup>1</sup>

In the capitulation agreed upon between Gens. Grant and Lee, of April 9, 1865, it was stipulated that each officer should give a parole under oath, for himself, (and also for the men under his command, when a commanding officer,) that he (and they) would not thereafter serve in the armies of the Confederate States or in any military capacity whatever against the United States of America, or render aid to the enemies of the latter, until exchanged; and that prisoners, on being paroled, should be at liberty to return to their homes. It was held by the Attorney General that this meant homes in the insurrectionary States, and that paroled prisoners could not legally return to homes in any loyal States, or publicly appear in their uniform therein, pending the war.<sup>2</sup>

#### IV. THE STATUS OF MILITARY GOVERNMENT AND THE LAWS OF WAR THERETO PERTAINING.

**Military Government Defined—Distinguished from Martial Law.** By *military government* is meant that dominion exercised in war by a belligerent power over territory of the enemy invaded and occupied by him and over the inhabitants thereof. By most writers, prior to the appearance of the dissenting opinion of Chase, C. J., in *Ex parte Milligan*,<sup>3</sup> this species of government was designated in general terms as "martial law," and thus was confused with or not properly distinguished from the *martial law proper*<sup>4</sup> exerted at home under circumstances of emergency, and yet to be considered. In the case referred to, the Chief Justice describes Military Government as a form of "military jurisdiction to be exercised by the military commander

1. X Opins., 357. A paroled prisoner cannot exercise a belligerent right, and therefore cannot assume to make a capture of property, though the same be *per se* legally a subject of capture. *Beck v. Ingram*, 1 Bush, 355.

2. XI Opins., 204. That the cessation of war and return of peace duly announced releases a paroled prisoner from his parole and from the military jurisdiction—see XII Id., 120, 332; Lieber, "Status of Rebel Prisoners of War," Miscellaneous Writings, vol. 2, p. 293.

3. 4 Wallace, 141.

4. Upon this point see also MARTIAL LAW, *post*.



under the direction of the President, in time of foreign war without the boundaries of the United States, or in time of rebellion and civil war within states and districts occupied by rebels treated as belligerents." Martial Law, on the other hand, he defines as an authority called into action, when the public danger requires it, in a locality or district, not of an enemy's country, but of the United States, and "maintaining adhesion to the general government."

Subsequently, indeed, to the date of this Opinion, the name "martial law" was not unfrequently applied to the status of military government in the late insurrectionary States.<sup>1</sup> For the more exact purposes, however, of this treatise, it is preferred to retain the above distinction.

**Military government**—as the term is here employed—is thus exercised over the belligerent or other inhabitants of an enemy's country in war foreign or civil; *martial law* over our own immediate fellow citizens, who, though perhaps disaffected or in sympathy with the public enemy, are not themselves belligerents or, legally, enemies. As the *field* of the former is country involved in war, so its *term* is that of the duration of the war, just as the term of martial law is the duration of the immediate exigency. But a state of war may subsist though active hostilities are not prosecuted. Thus, as the President, *before* a war is formally declared or initiated, may be called upon to employ the army in defensive operations,<sup>2</sup> so military government may legally be continued *in bello nondum cessante* equally as *in flagrante bello*.<sup>3</sup>

Military government is further distinguished from martial law in that, unlike the latter, it requires no formal proclamation or declaration for its inauguration but exists simply as a consequence of occupation and possession.<sup>4</sup> A proclamation is indeed useful, especially as a notice to resident or commorant *foreigners*.

**Its General Effect—Instances of its Exercise.** Military government is an exercise of sovereignty and as such dominates

1. See *U. S. v. Diekelman*, 92 U. S. 520.

2. Rawle on the Const., 109, 198; Cooley, Prins. Const. Law, 86, 100; Prize Cases, 2 Black, 635.

3. *Texas v. White*, 7 Wallace, 400; *Dow v. Johnson*, 100 U. S., 168. And see the subject of the military government under the Reconstruction Laws, *post*.

4. *Jeffries v. State*, 39 Ala. 655; G. O. 2, Dept. of the Miss., 1862.

the country which is its theatre in all the branches of municipal administration. The country must indeed be not merely occupied by the prevailing belligerent but firmly held,<sup>1</sup> but when so held, his government, whether administered by officers of his army or by civilians appointed for the purpose, is the government of and for all the inhabitants, native or foreign, wholly superseding the local law and civil authority except in so far as the same may be permitted by him to subsist. The municipal laws and ordinances may indeed be left in force, or they may be, in whole or in part, suspended and others substituted in their stead—in the discretion of the governing authority.<sup>2</sup> How such discretion shall be exercised will in general depend mainly upon the previous political relations of the belligerent powers, upon the present temper of the inhabitants and their officials, and upon the ability of the latter to preserve order and maintain justice. It may indeed happen that because of the incapacity of the local authorities to afford protection to the peaceable portion of the community, a strict military government may become a necessity.<sup>3</sup>

Instances in our history of military government are presented in our Revolutionary war during the occupancy by the British of Boston, New York and Philadelphia; at Castine, Maine, when taken and held by the British in 1814-15;<sup>4</sup> and in the provinces of Mexico in the course of the conquest of the same by our forces in 1846-7.<sup>5</sup> It was however during the late civil war, which, by

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1. "The government of the conqueror being *de facto* and not *de jure*, it must always rest upon the fact of *possession*. \* \* \* Not only must the possession be actually acquired, but it must be *maintained*." Halleck, 780. And see *Id.*, 798.

2. *Brown v. Gilman*, 4 Wheaton, 453; *Fleming v. Page*, 9 Howard, 614; *Cross v. Harrison*, 16 *Id.* 164; *Leitensdorfer v. Webb*, 20 *Id.* 177; *Ex parte Milligan*, 4 Wallace, 141; *Texas v. White*, 7 *Id.* 400; *Coleman v. Tenn.*, 97 U. S., 517; *Kimbal v. Taylor*, 2 Woods, 38; *Rutledge v. Fogg*, 3 Cold. 554; *Heffernan v. Porter*, 6 *Id.* 391; *Murrell v. Jones*, 40 Miss. 566; *Jeffries v. State*, 39 Ala. 655; *Halleck*, 776, 781, 798, 815.

3. As in the instance of our occupation of Mexico in 1847. See G. O. 237, Hdqrs. of the Army, 1847. It need hardly be added, however, that a conquered people are not to be "wantonly oppressed." See *Johnson v. McIntosh*, 8 Wheaton, 589.

4. *Brown v. Gilman*, 4 Wheaton, 253; *U. S. v. Hayward*, 2 Gallison, 501.

5. *Fleming v. Page*, 9 Howard, 614; *Cross v. Harrison*, 16 *Id.* 164; *Leitensdorfer v. Webb*, 20 *Id.* 177.

reason of its exceptional proportions, was assimilated to an international war,<sup>1</sup> that Military Government was more generally and variously exercised, and its nature more fully illustrated than at any previous period of our history.

**By whom Exercised.** Chief Justice Chase<sup>2</sup> describes military government as "exercised by the military commander under the direction of the President, with the express or implied sanction of Congress." Congress having, under its constitutional powers, declared or otherwise initiated the state of war, and made proper provision for its carrying on, the efficient prosecution of hostilities is devolved upon the President as Commander-in-chief. In this capacity, unless Congress shall specially otherwise provide, it will become his right and duty to exercise military government over such portion of the country of the enemy as may pass into the possession of his army by the right of conquest. In such government the President represents the sovereignty of the nation, but as he cannot administer all the details, he delegates, expressly or impliedly, to the commanders of armies under him the requisite authority for the purpose. Thus authorized these commanders may legally do whatever the President might himself do if personally present, and in their proceedings and orders are presumed to act by the President's direction or sanction.<sup>3</sup>

**Magnitude of the Power—Its Limitation.** The power of military government thus vested in the President or his military subordinates is a large and extraordinary one, being subject only to such conditions and restrictions as the law of war, in defining the particulars to which it may extend, imposes upon the scope of its exercise. As it is expressed by the Supreme Court, the governing authority "may do anything necessary to strengthen itself and weaken the enemy. There is no limit to

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1. Prize Cases, 2 Black, 636; *Coleman v. Tenn.*, 97 U. S. 517; *Dow v. Johnson*, 100 Id. 164; *Brown v. Hiatt*, 1 Dillon, 372; *Phillips v. Hatch*, Id. 571; DIGEST, 303-4.

2. 4 Wallace, 141.

3. *Cross v. Harrison*, 16 Howard, 164; *Hamilton v. Dillin*, 21 Wallace, 73; *Mechs. Bk. v. Union Bk.*, 22 Id., 276; *Gates v. Goodloe*, 101 U. S., 617; *Clark v. Dick*, 1 Dillon, 8; *Porte v. U. S.*, *Devereux*, 108; *Griffin v. Wilcox*, 21 Ind., 386; *Hefferman v. Porter*, 6 Cold. 391; DIGEST, 316.

the powers that may be exerted in such cases save those which are found in the laws and usages of war. \* \* \* *In such cases the laws of war take the place of the Constitution and laws of the United States as applied in time of peace.*"<sup>1</sup>

**Features of its Exercise—Appointment of Executive Officials.** While the conquering belligerent may, if he see fit, abstain from changing the machinery of the civil government of the enemy's country, he may, on the other hand, find it necessary or expedient to appoint for the same competent civilians or military persons as commissioners, governors, mayors, sheriffs, secretaries of state, collectors of customs, &c., who, upon his nomination and under his orders, will legally supersede the existing officials and so far administer the government.

In the leading case of *Cross v. Harrison*,<sup>2</sup> the Supreme Court affirmed the legality, "under the law of arms and the right of conquest," of the civil government established, pursuant to the orders of President Polk, by Gen. Kearney, in 1847, in Upper California, then in the possession of our forces as a conquered Mexican province. This government consisted mainly of military officers appointed to act as civil officials, to wit: Col. R. B. Mason, 1st Dragoons, as Governor, 1st Lieut. H. W. Halleck, Engineer Corps, as Secretary of State, Capt. J. L. Folsom, A. Q. M., as Collector of Customs, &c. Col. Mason was succeeded by Bvt. Brig. Gen. B. Riley, who continued military governor till Dec. 20, 1849, the date of the ratification and adoption of the first constitution of California.

In the later case of *Leitensdorfer v. Webb*,<sup>3</sup> the provisional civil government established by Gen. Kearney, in taking possession of New Mexico in 1846, was held, by the same Court, to have deposed the pre-existing municipal government, and to have been legally administered during the period of the possession of the country as a conquered province.

During the recent war the appointment by the President, of

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1. *New Orleans v. The Steamship Co.*, 20 Wallace, 393. That the power is measured and restricted only by the laws of war, see, also, *Sergeant on the Const.*, 330; 1 *Kent, Com.*, 306; *Flanders, Expos. of Const.*, 169, 184; *Little v. Barreme*, 2 *Cranch*, 170; *State v. Fairfield Com. Pleas*, 15 *Ohio St.* 377.

2. 16 *Howard*, 164. And see *Fleming v. Page*, 9 *Id.* 614, as to the authority of the collector appointed by the military commander at Tampico.

3. 20 *Howard*, 176.

Andrew Johnson, Edward Stanley and Geo. B. Shepley, as "military governors" of Tennessee, North Carolina and Louisiana, in March, May and June, 1862, respectively;<sup>1</sup> and, in 1865, of Messrs. Holden, Sharkey, Johnson, Hamilton, Parsons, Perry and Marvin as "provisional governors" of North Carolina, Mississippi, Georgia, Texas, Alabama, South Carolina and Florida respectively,<sup>2</sup>—presented further examples of an exercise, by the prevailing belligerent, under the laws of war, of the power to govern hostile states held by his armies. In New Orleans, in 1862, the department commander repeatedly appointed civilians, or detailed military officers, to fill municipal offices.<sup>3</sup>

**Appointment of Judges and Creation of Courts.** In the instance referred to in *Leitensdorfer v. Webb*, above cited, a part of the provisional government established in New Mexico by the commander of the invading army, and held legal and operative by the Supreme Court, was "a judicial system" consisting of a superior or appellate court, and circuit courts, whose jurisdiction was also specifically defined.

In the late civil war there was established at New Orleans by the President, by an order of Oct. 20, 1862, a civil court entitled the "Provisional Court of Louisiana," with both civil and criminal jurisdiction.<sup>4</sup> The authority of this court to hear and determine a cause in admiralty was sustained by the U. S. Supreme Court

1. See *Rutledge v. Fogg*, 3 Cold. 554, affirming the constitutionality of the appointment of the military governor of Tennessee.

2. The authority of the President to establish these provisional governments during the war is affirmed in *Texas v. White*, 7 Wallace, 400. And see *Handlin v. Wickliffe*, 12 Id. 173; *Scott v. Billgerry*, 40 Miss. 119; *McClelland v. Shelby Co.*, 32 Texas, 17.

3. S. O. 167, 210, 243, 491, Dept. of the Gulf, 1862. And see—as to the appointment of a mayor, &c., by these orders—*New Orleans v. The Steamship Co.*, 20 Wallace, 387.

4. As to the exercise of the power of appointment of civil officials, as most freely resorted to under the military government established by the Reconstruction Laws, see Title VII, *post*.

5. The order further appointed a person named as judge of the court, and empowered him to appoint a prosecuting attorney, marshal and clerk for the same; these appointments "to continue during the pleasure of the President, not extending beyond the military occupation of the city of New Orleans, or the restoration of the civil authority in that city and in the State of Louisiana." An interesting account of this Court is to be found in *Moore's Rebellion Record*, vol. 10, pp. 341-346.

in *The Grapeshot*;¹ and its judgment for the recovery of a mortgage debt of \$80,000, and execution issued for the sale of the mortgaged premises, were by the same court recognized as valid in *Burke v. Miltenberger*.² As to its jurisdiction of crimes, this appears maintained in an extended opinion of its judge, Hon. C. A. Peabody, in the cases of *U. S. v. Reiter* and *Louis*, charged with murder and arson.³

The Supreme Court, further, in *Mechs. & Traders' Bank v. Union Bank*,⁴ affirmed the legality of a judgment rendered by another war-court—the “Provost Court of New Orleans,” (established by the Department Commander in 1862,⁵) in an action for the recovery of a loan of \$130,000.

Other Provost Courts, with a jurisdiction assimilated in general to that of justices' or police courts, were established from time to time by military commanders during the war; as—for example—The “Provost Court of the Department of the Gulf,”⁶ a “Provost Court for the Department of Virginia,”⁷ a “Provost Court for the State of Texas,”⁸ a “Provost Court of the Department of Arkansas,”⁹ Provost Courts for the Posts of Vicksburg and Natchez,¹⁰ “Superior” and “Circuit” Provost Courts in Sub-Districts of the Department of the South,¹¹ “Post Provost Courts” in the Department of South Carolina,¹² a Provost Court at Alexandria, Va., whose jurisdiction was confined to cases in which colored persons were interested.¹³

The proceedings in civil cases of a further war-court, established by the Department Commander in Memphis in 1863, des-

1. 9 Wallace, 129.

2. 19 Wallace, 519. And see *Burke v. Tregre*, 22 La. An. 629.

3. 13 Am. Law. Reg. 534. And see *Hefferman v. Porter*, 6 Cold. 391.

4. 22 Wallace, 276. See this case also in 25 La. An. 387.

5. By G. O., Dept. of the Gulf, of May 1, 1862.

6. G. O. 45, Dept. of the Gulf, 1863.

7. G. O. 41, Dept. of Va., 1863.

8. G. O. 6, Dept. of the Gulf, 1864.

9. G. O. 12, Dept. of Ark., 1865.

10. G. O. 31, Dept. of Miss., 1865.

11. G. O. 102, Dept. of the South, 1865; S. O. 9, State of So. Ca., 1866.

12. G. O. 37, Dept. of So. Ca., 1866.

13. G. O. 103, Dept. of Washington, 1865. As to Provost Courts under the Reconstruction Laws, see under Title VII, *post*.

ignated a "Civil Commission," has been the subject of judicial examination, and its jurisdiction has been sustained by the courts of Tennessee.<sup>1</sup>

To cite a further instance—a "Court of Conciliation," consisting of three "Arbitrators," was established by Maj. Gen. Halleck at Richmond in 1865,<sup>2</sup> the function of which mainly was to adjudicate actions of debt "where the contracts were made upon the basis of confederate currency," which, it is added, "now has no legal existence."

As to this class of courts, it is to be said in general—that it is not only within the power of the commander, but, "for the security of persons and property and for the administration of justice,"<sup>3</sup> it often becomes his duty, to establish the same; that they are as legally authorized as any other courts of the land; and that their orders, decrees and records are entitled to the same full faith and credit as those of any other lawfully constituted tribunals.<sup>4</sup>

As illustrating the authority and jurisdiction of the courts established by military power during the occupation of the enemy's country in the late war, the remarks of Chief Justice Chase in his Address to the Bar, at Raleigh, No. Ca., in June, 1867, may well

1. *Hefferman v. Porter*, 6 Cold. 391; *State v. Stillman*, 7 Id. 341.

2. By G. O. 5, Div. of the James, May 3, 1865. It is declared in this Order that—"The fees charged will be simply sufficient to pay its expenses. Any surplus will be given to the poor. \* \* \* No fees will be charged to the poor. \* \* \* In its decisions the Court will be governed by the principles of equity and justice. All alike, white and colored, will be allowed the benefit of its jurisdiction. All proceedings will be simple and brief, and directed solely to ascertaining and securing exact justice." By G. O. 10, Id., the jurisdiction of the court was extended to the counties of Henrico and Chesterfield; and by G. O. 114, Id., (Gen. Terry,) to the entire Dept. of Va., 'as to suits by loyal owners to recover possession of real or personal property, sold or disposed of by authority of the confiscation laws of the confederate government.'

An instance of a similar special court, called a "commission," consisting of three Mexicans as "Arbitrators," to determine an old litigated controversy as to the rights of two citizens to certain land, was established, in the Mexican war, by Gen. Wool, in G. O. 516 of his Command, of 1847.

3. *The Grapeshot*, 9 Wallace, 129.

4. For further recognition of the authority of these war-courts, see *Handlin v. Wickliffe*, 12 Wallace, 173; *Lansfear v. Mestier*, 18 La. An. 497; *Taylor v. Graham*, Id. 656; *Scott v. Billgerry*, 40 Miss. 119; *Murrell v. Jones*, Id. 565; also *Cooley*, *Prins. Const. Law*, 44, 87; *Whiting War Powers*, 277.

be cited, as follows:—"The national military authorities took the place of all ordinary civil jurisdiction or controlled its exercise. All courts, whether state or national, were subordinated to military supremacy, and acted, when they acted at all, under such limitations and in such cases as the commanding general, under the directions of the President, thought fit to prescribe. Their process might be disregarded and their judgments and decrees set aside by military orders. \* \* \* The military tribunals, at that time, and under the existing circumstances, were *competent to the exercise of all jurisdiction, criminal and civil, which belongs under ordinary circumstances to civil courts.*"<sup>1</sup>

The civil court, as a branch of the civil government under the law of war and conquest, should—it need hardly be repeated—properly be established by the commander of the army of occupation. An *inferior* officer cannot in general be authorized to exercise such right of sovereignty.<sup>2</sup>

**Restrictions upon Courts.** As incidental to the power last considered, the President or army commander, in establishing new courts, or—especially—where he leaves the existing courts in operation, may impose upon the same such restrictions as to jurisdiction or procedure as he may deem requisite for the protection of loyal citizens, as well as of military persons or employees of the government. Specific instructions to this effect were given to commanders by the President in an order issued from the War Department near the close of the war.<sup>3</sup> Previously,

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1. Chase's Decisions, 133.

2. Snell *v.* Faussatt, 1 Washington, 271; XI Opins. At. Gen., 86, 149.

3. G. O. 3 of Jan'y. 12, 1866. This order is in full as follows:—

*"To protect loyal persons against improper civil suits and penalties in late rebellious States.*

Military Division and Department Commanders, whose commands embrace, or are composed of, any of the late rebellious States, and who have not already done so, will at once issue and enforce orders protecting from prosecution or suits in the State or Municipal Courts of such States, all officers and soldiers of the armies of the United States, and all persons thereto attached, or in anywise thereto belonging, subject to military authority, charged with offences for acts done in their military capacity, or pursuant to orders from proper military authority; and to protect from suit or prosecution all loyal citizens or persons charged with offences done against the rebel forces, directly or indirectly, during the existence of the rebellion, and all persons, their agents or employees, charged with the occupancy of abandoned lands or planta-



however, orders had been made from time to time in the military departments, with a view to the extending of similar protection against suits, prosecutions, or criminal process, as also against oppressive sales on execution, foreclosures, &c.<sup>1</sup> Proceedings had also been prohibited or suspended as against other special classes of persons; as, for example, suits, on the part of the original owners, against purchasers of confiscated property,<sup>2</sup> and for rent against lessees of captured or abandoned estates.<sup>3</sup> Subsequently to the General Order above cited, to wit, pending the period of the execution of the Reconstruction Laws, a similar course of action was quite generally pursued by the district commanders, as will hereafter be specified.

**Exaction of Contributions.** As a further feature of Military Government, the President, or commanding officer representing him, is authorized by the laws and usages of war to exact pecuniary contributions from the inhabitants for the support of the government or army.<sup>4</sup>

"Contributions" so called are generally exacted from persons

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tions, or the possession or custody of any kind of property whatever, who occupied, used, possessed, or controlled the same, pursuant to the order of the President, or any of the Civil or Military Departments of the Government, and to protect them from any penalties or damages that may have been or may be pronounced or adjudged in said Courts in any of such cases; and also protecting colored persons from prosecutions in any of said States charged with offences for which white persons are not prosecuted or punished in the same manner and degree." And see the detailed General Order, No. 2, Dept. of Washington, 1866, issued pursuant to the same; also ruling approving same in *State v. Cheek*, 25 Ark. 206.

1. See G. O. 15, 113, Dept. of the Gulf, 1863; Do. 34, Dept. of the Mo., 1864; Do. 113, 124, Dept. of Va., 1865; Do. 38, Dept. of Fla., 1865; Do. 76, Dept. of La., 1865; Do. 3, Dept. of So. Ca., 1865; Do. 7, Id., 1866; Do. 21, Dept. of Texas, 1866. In a few cases orders were issued prohibiting arrest or imprisonment for debt in general. G. O. 3, Dept. of Ala., 1865; and compare Do. 10, Second Mil. Dist., 1867, cited under Title VII, *post*. Magistrates, attorneys, or parties initiating or carrying on prohibited proceedings were made liable to arrest and punishment. See G. O. 113, 124, Dept. of Va., 1865.

2. G. O. 9, Dept. of Washington, 1866.

3. G. O. 31, Dept. of the Gulf, 1864.

4. *Fleming v. Page*, 9 Howard, 614. *Cross v. Harrison*, 16 Id. 189; *Hamilton v. Dillin*, 21 Wallace, 73; *Clark v. Dick*, 1 Dillon, 8; *Lewis v. McGuire*, 3 Bush, 202; Halleck, 458, 460; DIGEST, 306. That an inferior officer cannot, of his own authority, exercise this right, see *Lewis v. McGuire*.

in the mass—as from communities, towns, &c. Thus, upon the conquest of Mexico in 1847, Gen. Scott levied assessments, 'for the support of the American military occupation,' upon the nineteen States of that Republic, in sums from \$5,000 to \$668,332, the latter being the amount levied upon the Capital.<sup>1</sup> Previously, in March of the same year, at Monterey, Gen. Taylor had made and enforced an assessment upon the inhabitants of Tamaulipas, New Leon and Coahuila, by way of indemnification for the pillage and destruction of his wagon trains.<sup>2</sup>

In the case of *Fleming v. Page*,<sup>3</sup> the Supreme Court recognized as legal the establishing by the military commander of a custom house at Tampico, upon its occupation in 1847, and the levying through the same of duties on the foreign commerce of the country as "a mode of exacting contributions from the enemy to support our army," and therefore a legitimate war measure or "weapon of war." So, later, in *Cross v. Harrison*,<sup>4</sup> the same Court recognized as valid the authority of the President to impose, at San Francisco in 1847, through the military commander, "duties on imports and tonnage as military contributions for the support of the government and of the army."

In some instances special assessments have been resorted to for particular objects not of a military character, or for the benefit of classes or individuals. General Butler, as department commander, in 1862, levied about \$700,000 upon individuals and corporations, (alleged to have aided and abetted the enemy,) for the benefit of the "destitute poor" of New Orleans;<sup>5</sup> and it has been held that a subsequent commander, in 1864, was authorized in levying a tax of five dollars *per* bale on cotton brought into that city, to be applied to hospital, sanitary and charitable purposes.<sup>6</sup>

1. G. O. 287, 395, Hdqrs. of Army, 1847. Scott states in his Autobiography, (p. 582,) that there actually came into his hands "about \$220,000," of which \$102,000 was expended for the benefit of the soldiers, and \$118,000 was sent to Washington for the purposes of the founding of an Army Asylum—the present "Soldiers' Home."

2. Jenkins, Hist. of Mexican War, 243.

3. 9 Howard, 614.

4. 16 Howard, 189.

5. G. O. 55, 105, S. O. 247, Dept. of the Gulf, 1862. [As to other measures for the benefit of the *poor* of this command, see G. O. 19, 20, 21, 25, 30, 35, 55, 104, and S. O. 82, 166, 244, 246, Dept. of the Gulf, 1862.]

6. DIGEST, 306. And see *Hamilton v. Dillin*, 21 Wallace, 73.

In an order issued by General Grant, dated "In the Field, Chattanooga, Tenn., Nov. 5, 1863,"<sup>1</sup> stringent directions were given for the indemnifying of "Union families" and "Union refugees," (who had suffered from raids or been driven from their homes,) by means of "assessments" to be made upon "secessionists of the neighborhood." Similarly, by an order of the commander at Memphis in 1863,<sup>2</sup> resident enemies, having property, were required to contribute to the support of refugees driven within our lines by "insurrectionary violence." And by a subsequent order from the same source<sup>3</sup> assessments were levied upon a similar class of persons to *indemnify* loyal individuals for damages suffered by reason of the seizure or destruction of their property by parties engaged in illegal warfare. In some instances also the contribution was exacted with a view to the compensation or relief of the families of loyal citizens or of soldiers whose lives had been taken by guerillas or the like.<sup>4</sup>

#### **Seizure and Appropriation of Property in general.**

Upon the occupation and firm possession of enemy's country the title to public property found therein passes to the conqueror,<sup>5</sup> subject, as to lands and territory, to his conquest being confirmed—as the term is understood at international law.<sup>6</sup> In general, however, the private property of the individual inhabitants, including moneys, rents and proceeds, debts and the like, (though liable, as above indicated, for *contributions*,) remains, under the humane modern law of war, exempt from seizure, except under special conditions already indicated, as where, for example, its appropriation is "required by the necessities or convenience of the army,"<sup>7</sup> or where it is employed by the owner in unlawful trade or intercourse,<sup>8</sup> or is otherwise used, or intended or subject

1. G. O. 4, Div. of the Miss., 1863.

2. G. O. 101, Sixteenth Army Corps, 1863.

3. G. O. 128, Id.

4. G. O. 159, Dept. of the Mo., 1864; Do. 147, Dept. of the Gulf, 1864; Do. 6, Dept. of the Cumberland, 1864.

5. See *U. S. v. Klein*, 13 Wallace, 136; *U. S. v. Huckabee*, 16 Id., 414; *U. S. v. A Tract of Land*, 1 Woods, 475; *White v. Red Chief*, Id. 40; *Flanders*, Expos. of Const., 120; Halleck, 448; G. O. 154, Army of the Potomac, 1862.

6. See 1 Kent, Com. 110; Halleck, 447.

7. *Lamar v. Browne*, 100 U. S., 167-8.

8. Halleck, 496; *Mitchell v. Harmony*, 13 Howard, 133. Otherwise where the trade or intercourse was duly authorized. Id.

to be used, for the support or assistance of the enemy. Such for example were the *rents* held to have been lawfully seized by the federal commander at Memphis in 1862, as a precautionary measure to prevent their accruing to the enemy's benefit.<sup>1</sup> Of this description also was the *cotton* referred to under the last Title as frequently seized by the national forces in territory of the insurrectionary States invaded or occupied in the late war.<sup>2</sup> The legislation of Congress in regard to the capture of property at this time, and its disposition when captured, has also been remarked upon under that Title.

The right, under Military Government, to appropriate the private property of enemies for any purpose is to be regarded as materially modified where, upon a *permanent or continued occupation*, an increased measure of protection to person and property may come to be extended.<sup>3</sup> So, where a commander, in occupying a country or town of the enemy, has formally pledged the government to the holding inviolate of the rights of property of individuals, the seizure of private property by the military authorities will not be recognized as legal.<sup>4</sup> Thus an order given by Gen. Banks, commanding at New Orleans in 1863, for the taking possession for military use of moneys belonging to enemies on deposit in banks of that city, was held by the Supreme Court to have been unauthorized for the reason that Gen. Butler, by his proclamation, on first occupying the city, of May 1, 1862, had given an express pledge of the character indicated.<sup>5</sup>

### **Impressment of Citizens into the Military Service.**

This, by the laws of war under military government, may be resorted to in an emergency, for the public defence, where material exists for the purpose. Thus, the inhabitants generally were required by Gen. Jackson to perform military service or labor in the defence of New Orleans against the British, in 1814-15. By a General Order issued by the military commander at Memphis

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1. *Gates v. Goodloe*, 101 U. S., 612.

2. See citation from *Lamar v. Browne*, in note under last Title.

3. *Gates v. Goodloe*, 101 U. S., 615; *The Venice*, 2 Wallace, 258.

4. *Planter's Bk. v. Union Bk.*, 16 Wallace, 483. Compare the proclamation issued by Gen. Scott at Jalapa, May 11, 1847, in which it is declared that the army "will respect private property and persons and the property of the Mexican church." Scott's Autobiography, p. 549.

5. *Planter's Bk. v. Union Bk.*, *ante*.

in 1863, district, division and brigade commanders were required to impress all able-bodied persons so as to fill up regiments and batteries to their maximum.<sup>1</sup> A similar order, (G. O. No. 4,) was made in the same year by the commander of the Department and Army of the Tennessee.

**Police Regulations.** Gen. Scott, in occupying Mexico, made provision in one of his principal orders<sup>2</sup> for establishing a Mexican civil police to act in conjunction with the army. The organization of a local police force in some districts of the South was also provided for in Orders during the late war.<sup>3</sup>

Of the regulations of police ordained by commanders in that war the most frequent were the *quarantine* regulations, established generally at sea ports occupied by our forces,<sup>4</sup> pursuant to a direction of the President.<sup>5</sup> Regulations were also imposed by way of restriction upon local traders, especially those trading by boats on the great rivers connecting States, as the Ohio<sup>6</sup> and Mississippi;<sup>7</sup> as also upon persons carrying on business injurious to the military service—such as dealers in liquor<sup>8</sup> and in military clothing.<sup>9</sup> Other regulations made provision in regard to the passes which should be required for passing the lines,<sup>10</sup> or for travelling through disturbed parts of the country;<sup>11</sup> also in regard to passengers embarking upon and landing from vessels, who were required to be furnished with passports, to have their baggage examined and to be deprived of the arms in their pos-

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1. G. O. 157, Sixteenth Army Corps, 1863.

2. G. O. 287, Hdqrs. of Army, 1847.

3. See G. O. 129, Sixteenth Army Corps, 1863; Do. 43, Dept. of No. Ca., 1865.

4. See G. O. 15, Dept. of No. Ca., 1866; Do. 4, 24, Dept. of So. Ca., 1866; Med. Dctr. O., Id., April 1, 1866; G. O. 11, Dept. of the Carolinas, 1866; Do. 12, 15, Dept. of Ala., 1866; Do. 20, Dept. of Fla., 1866; Do. 21, Dept. of La., 1866; Do. 10, 12, 13, Dept. of Texas, 1866.

5. G. O. 15 of 1866.

6. G. O. 26, Dept. of the Ohio, 1861.

7. See the G. O., Dept. of the Gulf, for 1864 especially.

8. G. O. 31, Dept. of So. Ca., 1865.

9. G. O. 162, Sixteenth Army Corps, 1863.

10. G. O. 56, Army of the Potomac, 1861; Do. 27, Id., 1862; Do. 10, Dept. of the South, 1863.

11. G. O. 22, Dept. of N. Mex., 1864.

session.<sup>1</sup> Others regulated the use of railroads and of telegraph lines.<sup>2</sup> By orders issued by the department commander in August, 1862, the population of New Orleans, (with some exceptions,) was required to be disarmed.<sup>3</sup>

**Regulation of Labor.** The regulating of labor was in general restricted to cases of freedmen or colored persons brought by the chances of war within military protection and care, for whose government, subsistence and employment upon plantations, &c., orders were frequently issued.<sup>4</sup>

**Requirements as to Oaths of Allegiance.** Upon the occupation of hostile country during the late war, the taking and subscribing of an oath of allegiance to the United States were not unfrequently required of citizens before they were permitted to act or resume their functions as civil officers, attorneys, jurors, &c., or to trade, vote, &c.<sup>5</sup> One of the most pointed of the orders of this description was G. O. 4, Division of the James, 1865, issued

1. G. O. 35, Dept. of the Pacific, 1864; Do. 5, 18, Id., 1865.

2. G. O. 8, 36, 57, Dept. of No. Ca., 1865.

3. It is stated by Parton, ("Gen. Butler in New Orleans," p. 463,) that about 6000 arms were surrendered under these orders.

4. See, for example, G. O. 112, Middle Dept., 1864; Do. 23, Dept. of the Gulf, 1864; Do. 23, Id., 1865; Do. 34, Dept. of the Miss., 1865; G. O., Dept. of No. Ca., 1865, *passim*. See also G. O. 9, Dist. of Fla., 1865, in which Gen. Newton establishes a "system of labor" throughout Florida to prevent vagrancy. As an instance of another sort of labor regulation—G. O. 65, Dept. of the Mo., 1864, prohibits combinations of workmen designed to defeat the manufacture of things needful for military use.

5. See G. O. 41, 42, Dept. of the Gulf, 1862; Do. 29, 41, Dept. of the Mo., 1862; Do. 3, Dept. of the Miss., 1862; Do. 53, 59, Middle Dept., 1863; Do. 49, Dept. of Va. & No. Ca., 1863; Do. 65, Sixteenth Army Corps, 1863; Do. 4, Div. of the James, 1865; Do. 38, Dept. of Ala., 1865. In the G. O. cited of the 16th Corps, *all* citizens are required to register, enroll, and take the oath, under penalty of being sent south. In the G. O. cited of the Dept. of Va. & No. Ca., the official acts of civil officers not taking the oath are declared void. In G. O. 49, Id., transfers of property by persons who have not returned to their allegiance are forbidden and declared to be without legal validity. The administering of the oath was generally devolved upon the Provost Marshal, whose duty it was also made to arrest persons who violated their oaths.

Deserters from the enemy were also required to take the oath before they could be released from arrest or employed. See G. O. 4, Dept. of the Ohio, 1864.

by Gen. Halleck during the military government of Richmond in April of that year.<sup>1</sup>

**Regulation of Elections.** Beside requiring voters to take an oath of allegiance,<sup>2</sup> the commander administering military government may, in proper cases, order elections to be held,<sup>3</sup> and, where disorder or fraud is apprehended at any election, may so regulate the conduct of the same as to secure a fair ballot and prevent breaches of the peace.<sup>4</sup> The subject, however, of the ordering and regulating of elections is one which, in our history, has been most fully illustrated by the special military government

1. This Order is in full as follows:

"I. Clerks of courts of records in Richmond and Petersburg will be permitted to resume their functions on taking the oath of allegiance.

II. All attorneys, counsellors, advocates and proctors, and others licensed to practice a particular profession, trade or business; the presidents, directors and officers of all corporations, and all persons availing themselves of the benefit of General Order No. 2, in regard to trade, will be required to take the oath of allegiance to the United States. Any person in the above mentioned cities, who, without taking the oath, shall, after the first of May next, attempt to practice any licensed profession, or engage in any licensed trade or business, or shall exercise the functions of a president, director, or officer of any corporation, will be arrested. The foregoing provisions will be enforced in other parts of the State as early as practicable.

III. All persons making claims for restoration of private property, before a Provost Marshal, or any other military officer, court, or commission, will be required to take the oath of allegiance to the United States, and until the claimant takes the prescribed oath, his claim will neither be granted nor considered.

IV. All officers of customs in this Military Division are requested to give no clearances or permits to ship or land goods or other articles of trade, to any person or for the benefit of any person who has not taken the oath of allegiance to the United States.

V. No marriage license will be issued until the parties desiring to be married take the oath of allegiance to the United States, and no clergyman, magistrate, or other person authorized by State laws to perform the marriage ceremony, will officiate in such capacity until he himself and the parties contracting matrimony have taken the prescribed oath of allegiance.

VI. Any person acting in violation of these orders will be arrested, and a full account of the case reported to these Head Quarters."

2. See under last head.

3. Note, for example, the proclamation of Gen. Banks, Comdg. Dept. of the Gulf, of Jan'y. 11, 1864.

4. G. O. 53, 59, Middle Dept., 1863; Do. 24, Dept. of the Gulf, 1864; Do. 141, Dept. of No. Ca., 1865; Do. 51, Dept. of Ky., 1865; Do. 21, Dept. of Fla., 1865.

instituted under the Reconstruction Laws—to be adverted to hereafter.

**Direction of Education or Religious Worship.** This is an authority which, though rarely exercised, is still, in a proper case, within the powers of military government. An instance of an assuming of control of the subject of education is presented by an Order of 1864 in which Gen. Butler, as Department Commander, appoints an army chaplain to be superintendent of public education, both for white and black children, and makes attendance at school compulsory, &c.<sup>1</sup> A marked instance of direction as to religious ministrations is found in the General Order of the Department of Alabama, in which the Episcopal Bishop Wilmer, who had instructed the clergy of his diocese to omit from the church service the usual prayer for the President, was, with the clergy who had complied, suspended and forbidden to preach or perform divine service, and their churches were closed, till they should resume the prayer and take the amnesty oath prescribed in the President's proclamation of Dec. 8, 1863.<sup>2</sup> In New Orleans, in 1862, several Episcopal clergymen were arrested and sent to New York, for confinement in Fort Lafayette, for refusing to read the same prayer;<sup>3</sup> and on another occasion the churches of the city were ordered not to observe a particular day which had been designated by President Davis as a fast.<sup>4</sup>

**Control of Publications.** The commander, in the exercise of military government, may suppress or suspend newspapers, books, or other publications by which hostility is excited against

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1. G. O. 150, Dept. of Va. & No. Ca., 1864. Similar action, according to Parton, ("Gen. Butler in New Orleans," p. 435,) was taken by the same commander in N. Orleans in 1862, when, it is said,—“the school system was reorganized on the model of that of Boston. A bureau of education and a superintendent of public schools were appointed.”

2. G. O. 38, Dept. of Ala., 1863. Later, in the remarkable G. O. 40, Div. of the Tenn., 1865, (published in G. O. 2, Dept. of Ala., 1866,) Gen. Thomas removed the restriction on the ground that the action of Wilmer had been practically repudiated by the people of Alabama, as manifested by their increasing loyalty to the Union.

3. On being released and returned to N. Orleans, these clergymen were required by Gen. Banks to take an oath of allegiance as a condition to their landing; and, on their refusal to do so, they were sent back to New York. Parton, "Gen. Butler in New Orleans," p. 484.

4. G. O. 27, Dept. of the Gulf, 1862.



his Government or its measures in the prosecution of the war, or information or encouragement is conveyed to the enemy. In New Orleans, in 1862, Gen. Butler, after interdicting a certain class of publications in his proclamation of May 1,<sup>1</sup> temporarily suspended several newspapers;<sup>2</sup> one, the "True Delta," being placed in charge of two officers detailed for the purpose, who proceeded to edit it "in the interest of the United States."<sup>3</sup> By an order published in Memphis in 1863, Gen. Hurlbut suppressed a Chicago newspaper within his command for publishing a series of calumnious articles against the President and thus exciting disloyalty to the Government.<sup>4</sup> So, in an Order of the Department of Virginia of 1865, Gen. Terry ordered the Provost Marshal of his command to seize the presses, types, &c., belonging to the proprietors of one of the Richmond newspapers, and prevent its future publication, because it had styled a part of the President's amnesty proclamation as "heathenish," and a certain Act of Congress as "mean, brutal and cowardly, revoltingly absurd and atrociously unjust."<sup>5</sup> In a later G. O. of the same Department the same commander ordered the office of another Richmond newspaper to be closed, and the writer of an article therein, which had disparaged the memory of President Lincoln and reflected offensively upon President Johnson and his administration, to be placed in arrest.<sup>6</sup> In Orders of the Department of the

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1. See extracts from this proclamation under next Title.

2. To wit, the *Crescent*, *Bee*, *Delta*, *Picayune*, *Daily Advocate*, and *Estafette du Sud*,—by G. O. 17, 235, 513, and S. O. 37, 39, 42, 235, Dept. of the Gulf, 1862. And see case of Henri Dubos, arrested and imprisoned by Gen. Butler for publishing alleged seditious articles in a further newspaper of New Orleans called "The Compilateur." *Dubos v. United States*, Report of Counsel of U. S. on Proceedings of French-American Claims Commission, p. 109, and Appendix "H," containing dissenting opinion of Mr. Commissioner Aldis.

3. Parton, "Gen. Butler in New Orleans," p. 283, 434, 435.

4. G. O. 4, Sixteenth Army Corps, 1863.

5. G. O. 87, Dept. of Va., 1865. In the subsequent G. O. 92 of the same Department and year, it was declared that, as the editors and proprietors had expressed regret at the publication, and given assurance that there would be no further cause of offence, (and in view of the recommendation of Governor Pierpont, &c.,) the former order had been rescinded.

6. G. O. 119, Dept. of Va., 1865. In Do. 123, Id., it was announced that, upon a proper acknowledgment of wrong and assurance of reform, the paper had been permitted to resume.

In G. O. 27, Dept. of Pacific, 1865, Gen. McDowell, in ordering the

Ohio of 1863 the circulation is interdicted of a New York and a Chicago newspaper as being disloyal and incendiary,<sup>1</sup> and the publication of "disloyal books" is prohibited,<sup>2</sup>—under pain of the arrest and punishment of the offenders.

In an Order of the Department of the East of 1865, Gen. Dix, pursuant to instructions from the War Department, gives notice to editors and proprietors of all newspapers in his Department that "the system of correspondence with the rebel States by advertising under the head of 'Personals' or otherwise in the columns of such papers must immediately cease." And it is added that, if continued, the parties concerned will be arrested and brought to trial by military commission for a violation of the laws of war.<sup>3</sup>

In other instances—to be referred to under the head of the Military Commission—editors and publishers, or correspondents, of newspapers have been brought to trial and sentenced to imprisonment, expulsion from the military department, &c., on account of published articles giving information to the enemy, supporting the hostile cause, discouraging volunteer enlistments, counselling resistance to the draft, &c.<sup>4</sup>

**Restraint and Punishment.** While the peaceable citizens of a country under military government are in general exempt from military arrest or restraint of the person, the governing commander<sup>5</sup> is authorized to apprehend all persons guilty of violations of the laws of war, hostile demonstrations, or public dis-

arrest of persons who should "exult over the assassination of President Lincoln," adds—"Any *paper* so offending, or expressing any sympathy in any way whatever with the act, will be at once seized and suppressed."

1. G. O. 84, Dept. of the Ohio, 1863. [Revoked, pursuant to a direction of the President, by Do. 91, Id.]

2. G. O. 87, Dept. of the Ohio, 1863. With these instances of action taken by department commanders, note the case of the suppression of the Circleville, (Ohio,) Watchman, and arrest of its editor and publisher, under an order from the War Department of June, 1862, described in *Kees v. Tod*, Whiting, War Powers, 216.

3. G. O. 10, Dept. of the East, 1865. And see reference to the subject of this Order under the "Forty-Sixth Article," *ante*, Vol. I, p. 906.

4. See G. O. 11, Dept. of the Miss., 1862; Do. 29, Army of the Potomac, 1863; Do. 14, Northern Dept., 1865; G. C. M. O. 1, Dept. of No. Ca., 1866.

5. That a *subordinate* cannot, of his own will, make such arrests, see *Cochran v. Tucker*, 3 Cold. 186.

orders, and in extreme cases to inflict upon them summary punishment. Thus, in the Department of the Gulf in 1862, persons of both sexes charged with disloyal or illegal acts were in several instances sent to Ship Island for confinement:<sup>1</sup> in another instance four persons were hung without trial for aggravated plundering and robbery.<sup>2</sup> In the same department in 1863, a citizen, for violations of the trade regulations with a view to aid the enemy, was condemned by the department commander, without a trial, to a year's hard labor and a fine of \$25,000.<sup>3</sup> And in repeated cases,—for hostile language or conduct, or for refusing to register and take the oath of allegiance, &c.,—persons have been summarily put outside the lines of the army or banished from the country.<sup>4</sup>

. In the great majority of cases, however, the inhabitants of States or districts under military government during the late war, who offended against the laws of war, or were guilty of crimes or disorders, were brought to trial before *military commissions*—as hereafter to be more particularly indicated.

## V. THE STATUS OF MARTIAL LAW AND THE LAWS OF WAR APPLICABLE THERETO.

**Martial Law Defined.** Martial law, as the term is used in this treatise, is military rule exercised by the United States, (or a State,) over its own citizens, (not being enemies,) in an emergency justifying it. In the early Chapters the distinction has been referred to between this law and Military Law proper, the code of the soldier, with which it was formerly confused.<sup>5</sup> In the

1. S. O. 150, 151, 152, 179, 180, 288, Dept. of the Gulf, 1862; Case of Henri Dubos, cited on page 35, note 3, *ante*.

2. S. O. 98, 103, Dept. of the Gulf, 1862.

3. G. O. 36, Id., 1863.

4. G. O. 49, 65, Sixteenth Army Corps, 1863, (and see Do. 101, Id.; Do. 73, 145, Dept. of the Mo., 1864; Do. 8, Dept. of No. Ca., 1865. In G. O. 38, Dept. of the Ohio, 1863, it is declared generally that persons in "the habit of declaring sympathies for the enemy" will be at once arrested with a view to trial, "or sent beyond our lines into the lines of their friends."

5. The apparent confounding of these designations by Hale and Blackstone, as indicated in Chapter V, led to a confusing of the same by subsequent writers. This confusion is still occasionally encountered, though the later authorities in general clearly define and separate the two terms.

present PART it has already been distinguished from Military Government, the dominion exercised in war, (foreign or civil,) over the territory and inhabitants of an enemy's country upon its conquest and occupation. The term "martial law," has indeed not unfrequently been employed indifferently to describe any form of military control whether of our own people or of enemies. But this use, while colloquially admissible, is regarded by the author as unsatisfactory and confusing as a legal designation.

**Occasion and Field of Martial Law.** It has been held by the Supreme Court in *Ex parte Milligan*<sup>1</sup> that "martial law" is "confined to the locality of actual war," and also that it "can never exist when the courts are open and in the proper and unobstructed exercise of their jurisdiction." But this ruling was made by a bare majority—five—of the court at a time of great political excitement, and the opinion of the four other members, as delivered by the Chief Justice, was to the effect that martial law is *not* necessarily limited to time of war but may be exercised at other periods of "public danger,"<sup>2</sup> and that the fact that the civil courts are open is not controlling against such exercise since they "might be open and undisturbed in the execution of their functions and yet wholly incompetent to avert threatened danger or to punish with adequate promptitude and certainty the guilty." It is the opinion of the author that the view of the minority of the court is the sounder and more reasonable one,<sup>3</sup> and that the

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See Forsyth, Const. Law., 207-214; 2 McArthur, 33; Samuel, 185; Hough, (P.) 514; Griffiths, 20; Pipon & Col., 10; Prendergast, 8; Clode, M. L., 4, 178; Maltby, 2-4; O'Brien, 26-27; De Hart, 17; 3 Greenl. Ev. § 468; 1 Kent, Com., 376; Halleck, 373; Boyd's Wheaton, 346 d—346 e; Luther v. Borden, 7 Howard, 59; Tyler v. Pomeroy, 8 Allen, 480; State v. Rankin, 4 Cold. 145; Griffin v. Wilcox, 21 Ind. 377; *In re Kemp*, 16 Wis. 368; 1 Bishop, C. L., 44-46, 50-52, 55; VIII Opins. At. Gen., 365-370.

The name by which our military courts are designated—"court *martial*"—has probably had not a little to do with perpetuating the confusion referred to.

1. 4 Wallace, 127.

2. See Hallam, Const. Hist. Eng., vol. 1, p. 240, cited *post*; also 9 Am. Law Reg., 498.

3. Wells, in his work on the Jurisdiction of Courts, p. 575, in expressing his concurrence with the views of the minority of the judges in *Ex parte Milligan*, observes of the conclusion of the court as adopted by the majority—"This case can never become a lasting precedent." And see 1 Bishop, C. L. § 52, note, where, referring to the ruling in question, the

conclusion of the majority was influenced by a confusing of martial law proper with that *military government* which exists only at a time and on the theatre of war, and which was clearly distinguished from martial law by the Chief Justice, in the dissenting opinion—the first complete judicial definition of the subject.<sup>1</sup>

While therefore the *emergency* under which martial law is lawfully exercised may be *war*; while it is in fact during war, and because of the exigencies incident to war, that such law has most frequently been resorted to; it is not—in the judgment of the writer—war alone that may call it into existence. It may also, it is believed, legally be inaugurated at a time of “rebellion or invasion,” when, as provided in the Constitution,<sup>2</sup> “the public safety may require” the suspension of the writ of *habeas corpus*; or at a time of the “insurrection” or “invasion” of which Congress is empowered by the same instrument to provide for the suppressing or repelling;<sup>3</sup> or at a juncture of impending hostilities<sup>4</sup> or internal riot or disorder, when the laws of the United States cannot otherwise be duly enforced. At such times, whether it be essential under the Constitution that Congress shall specially authorize it, or sufficient that the President, as the official charged to faithfully execute the laws and command the armies,<sup>5</sup> formally proclaim it,—it may, it is considered, be initiated, in any part of the United States in which the emergency may occur, with the same legality as at a time and on the field of actual war.<sup>6</sup>

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author says—“A mere *dictum* from the bench carries no weight beyond that of its own inherent reasons.” See also *Id.* § 64, note.

1. See his opinion, as cited *ante*, p. 18, under the head of “Military Government Defined.” A similar distinction is also taken by Atty. Gen. Cushing, (VIII Opins., 368, 369,) between martial law as exercised in an enemy’s country, (the “military government” of Chief Justice Chase,) and martial law as a “*domestic fact*” exercised at home. And compare Halleck, 372–3.

2. Art. I, sec. 9 § 2.

3. Art. I, sec. 8 § 15.

4. That martial law may be declared in places threatened with invasion or subject to incursions by the enemy, see G. O. 2, Dept. of the Miss., 1862; Do. 54, Dept. of Kansas, 1864.

5. Art. II, secs. 2, 3.

6. To quote again from Chief Justice Chase’s definition,—it, (martial law,) is “to be exercised in time of invasion or insurrection within the limits of the United States, or, during rebellion, within the limits of States maintaining adhesion to the National Government, when the pub-

**Assimilated to the State of Siege.** As thus exercisable, martial law, in this country, resembles, and has been compared to,<sup>1</sup> the *state of siege* of the continental nations of Europe—a condition of domestic military rule imposed in besieged towns, as also in cities or districts during foreign or civil war, or at periods of grave public disorder especially those succeeding upon a state of war.<sup>2</sup>

**As Exercised under British rule.** Martial law, as such, has not been proclaimed or exercised in England since the Revolution of 1688. The Riot Act, under which the military, acting in aid of the civil authority, may attack mobs not duly dispersing, seems to have proved a sufficient provision for the suppression of such disorders as have occurred. That martial law may be resorted to in the event of actual rebellion seems to be conceded,<sup>3</sup> though it would appear that it would have to be expressly authorized by Act of Parliament, or at least sanctioned by a subsequent Act of Indemnity. It has been repeatedly resorted to in

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lic danger requires its exercise, \* \* \* and is called into action by Congress, or temporarily, when the action of Congress cannot be invited and in the case of justifying or excusing peril, by the President, in times of insurrection or invasion, or of civil or foreign war, within districts or localities where ordinary law no longer adequately secures public safety and private rights." 4 Wallace, 141.

As to the power of the President, by virtue of his being Commander-in-chief, to exercise martial law, see, further, Whiting, War Powers, 163 *et seq.*; Kees v. Tod, Id., 216; McCormick v. Humphrey, 27 Ind. 144. The view of Bishop, (1 C. L. § 60,) that the President possesses this power as Executive, martial law being one of the "laws" which he is required faithfully to execute—is deemed more curious than sound.

1. VIII Opins. At. Gen., 371, 374; Halleck, 374.

2. As in Paris and other parts of France and in Algiers, after the Franco-Prussian war and the suppression of the Commune, in 1871.

3. "There may, in times of pressing danger, when the conservation of all demands the sacrifice of the legal rights of the few—there may be circumstances that not only justify but compel the temporary abandonment of constitutional forms. It has been usual for all governments, during an actual rebellion, to proclaim martial law, or the suspension of civil jurisdiction." Hallam, Const. Hist. Eng., vol. 1, p. 240. "It cannot be too strongly urged that such a thing as martial law is unknown to English jurisprudence. The law of England presupposes a state of peace, and disturbers of that peace can be found guilty of treason, felony, or misdemeanor, according to circumstances. On the other hand, no judicial decisions can alter the fact that the application of military government under the law of necessity, commonly called martial law, must always exist, although it is difficult to exactly define it." Pratt, 214.

Ireland, as also in the colonies—notably in Jamaica, Ceylon, Demerara and at the Cape of Good Hope, in giving its exercise in Jamaica in 1867, under the proclamation of Governor Eyre, 354 persons were put to death under sentence of court-martial and 85 persons without trial; 600 persons, some of whom were women, were flogged and imprisoned; and 1000 dwellings were destroyed by burning—all by way of punishment of alleged rebels and within a period of one month. The English authorities have differed as to the proper nature of martial law and the extent of the military control which it justifies. Thus, some have considered that it simply permits the application to the citizen of the code of the soldier; others that it places in the hands of the military commander a discretionary power to be exerted according as, and so far as, the necessities of the exigency may require.

The latter view is the one which accords the more nearly with our own law and practice.<sup>2</sup> But as we have never had occasion to employ martial law with regard to a subject and inferior race, its exercise in this country has had little in common with its mode of application in the British colonies.

**Its Formal Initiation.** Unlike Military Government, which exists as a consequence of occupation and possession of enemy's country, martial law, involving as it does a material change in the political condition of peaceful citizens and a considerable restriction perhaps of their rights or privileges, is properly and customarily inaugurated by a formal *proclamation* of the President as Commander-in-chief,<sup>3</sup> or *declaration* of the commanding gene-

1. Finlason, *passim*; Clode, 2 M. F., 168-174, 481-511.

2. The two views indicated are best represented—the first by the charge of Cockburn, C. J., to the grand jury at the Central Criminal Court, in the case of *Queen v. Nelson and Brand*, (published, London, 1867;); the second by the opinions of Finlason as expressed in his various works. See his "Treatise on Martial Law," "Commentaries on Martial Law," "History of the Jamaica Case," "Report of the Case of *Queen v. Eyre*," "Review of the Authorities as to the repression of Riot and Rebellion."

3. When initiated in a State, it may be proclaimed by the Governor or declared by an Act of the Legislature, according as may be deemed legal or expedient under the Constitution and laws. In the case of the Dorr rebellion in Rhode Island, the General Assembly, by an Act of June 25, 1842, placed the State under martial law, and the Governor thereupon issued a proclamation announcing the fact. *Luther v. Borden*, 7 Howard, 8.

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As . . . Court in the case of Rhode Island at  
 the time of . . . lition of 1842, the government of a State  
 may, when the . . . safety demands it, proclaim martial law  
 within its own limits, without infringing upon the U. S. Consti-  
 tution by exercising war powers delegated to Congress.<sup>2</sup>

**Its Limitations.** The employment of martial law has been likened to the exercise of the right of *self-defence* by an individual.<sup>3</sup> Its occasion and justification thus is necessity.<sup>4</sup> But though in general without other limit than the discretion of the commander upon whom its execution is devolved, it is not an absolute power but one to be exercised with such stringency only as circumstances may require. The often quoted remark that martial law is simply "the will of the general who commands the army"<sup>5</sup> is a description much less apposite in practice to martial law proper, or *domestic* martial law, than to that *military government of enemies*<sup>6</sup> heretofore considered, and with reference to which in fact the observation was originally employed by Wellington. Martial law is indeed resorted to as much for the protection of the lives and property of peaceable individuals as for the repression of

1. *Clark v. Dick*, 1 Dillon, 8; Halleck, 380; DIGEST, 316.

2. *Luther v. Borden*, 7 Howard, 1. A governor of a Territory has no such power. VIII Opins. At. Gen., 365.

3. 1 Hallam, Const. Hist., 240. And see *Luther v. Borden*, 7 Howard, 46; 9 Am. Law Reg., 498.

4. 1 Kent, Com., 341, note; Hough, 535; *In re Egan*, 5 Blatch. 319.

5. Clode, M. L., 182, 184; Finlason, Coms. on Mar. Law, 141; VIII Opins. At. Gen., 367.

6. See *U. S. v. Diekelman*, 92 U. S., 526.



hostile or violent elements.<sup>1</sup> It may become requisite that it supersede for the time the existing civil institutions, but, in general, except in so far as relates to persons violating military orders or regulations, or otherwise interfering with the exercise of military authority, martial law does not in effect suspend the local law or jurisdiction<sup>2</sup> or materially restrict the liberty of the citizen: it may call upon him to perform special service or labor for the public defence but otherwise usually leaves him to his ordinary avocations.<sup>3</sup>

It is a principle of the exercise of martial law that even when required to be executed with exceptional stringency and for a protracted period, it shall not be permitted to serve as a pretext for *license* or *disorder* on the part of the military; and acts of undue violence and oppression committed in its name will by the laws of war be visited with extreme punishment.<sup>4</sup>

It is a further principle that, while martial law is not to be inaugurated precipitately or inconsiderately, so it is to be *continued* only so long as the public exigency on account of which it was declared shall prevail.<sup>5</sup> It is not indeed essential to the discontinuance of such state that the original declaration of the same be formally *revoked*: when the emergency has ceased, or within a reasonable interval thereafter, the status may be deemed to have lapsed, and cannot lawfully be further continued or enforced.<sup>6</sup>

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1. G. Field O. 2, Dept. of the Ohio, 1862. G. O. 2, Div. of the Mo., 1865, p. 10; Do. 15, Div. of the Gulf, 1866.

2. G. O. 34, Dept. of the Mo., 1861; Do. 39, Id., 1862; Do. 54, Dept. of Ark., 1864. And see *Com. v. Palmer*, 2 Bush, 570.

3. "Martial law is elastic in its nature, and easily adapted to varying circumstances. It may operate to the total suspension or overthrow of the civil authority; or its touch may be light, scarcely felt or not felt at all by the mass of the people, while the courts go on in their ordinary course, and the business of the community flows in its accustomed channels." 1 Bishop, C. L. § 52.

4. *Despan v. Olney*, 1 Curtis, 306; *Luther v. Borden*, 7 Howard, 1; *Finlason*, Coms. on Mar. Law, 61; Hough, 535; Lieber, Inst. § 4; DIGEST, 316.

5. *Queen v. Nelson & Brand*, and *Queen v. Eyre*, Charges of Cockburn C. J. and Blackburn J., *Finlason*, *passim*; Pratt, 216; Hough, 535; 1 Bishop, C. L. § 55; *In re Egan*, 5 Blatchford, 319; *In the matter of Martin*, 45 Barb. 145; DIGEST, 317. "Nations are prone to introduce too soon, to extend too far, to retain too long, so perilous a remedy." Hallam, Const. Hist. Eng., 240.

6. DIGEST, 317.

**Instances illustrating the Operation of Martial Law.**

The nature and operation in practice of martial law will be illustrated by a reference to the principal instances of its employment in our history.

Passing over such early cases as those of the proclamation of martial law in Boston by General Gage in June, 1775,<sup>1</sup> and in Virginia in November of that year by Governor Dunmore,<sup>2</sup> as well as the occasion of its being substantially exercised by Gen. Wilkinson, in Louisiana, at the period of the Burr conspiracy, in November, 1806,—an instance more material to be noticed in referring presently to the subject of the suspension of the writ of *habeas corpus*,—we come to the action by Gen. Jackson at New Orleans in 1814.

*As declared by Gen. Jackson at New Orleans.* This action was initiated by a proclamation of Dec. 16 of that year, as follows:—"Major General Andrew Jackson, commanding the seventh United States military district, declares the city and environs of New Orleans under strict martial law, and orders that in future the following rules be rigidly enforced, viz: Every individual entering the city will report to the adjutant general's office, and, on failure, to be arrested and held for examination. No person shall be permitted to leave the city without a permission in writing, signed by the General or one of his staff. No vessels, boats, or other craft will be permitted to leave New Orleans or Bayou St. John without a passport in writing from the General or one of his staff, or the commander of the naval forces of the United States on this station. The street lamps shall be extinguished at the hour of nine at night, after which time persons of every description found in the streets, or not at their respective homes, without permission in writing as aforesaid, and not having the countersign, shall be apprehended as spies and held for examination."

The British forces under Maj. Gen. Pakenham were then threatening the city, and, as it is added by a late writer,<sup>3</sup>—"All able-bodied men, of whatever race, color, rank or condition, were compelled to serve either as soldiers or sailors. The old men and the

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1. Bancroft, Hist. U. S., vol. 7, p. 392.

2. Id., vol. 8, p. 223.

3. Parton, Life of Andrew Jackson, vol. 2, p. 61.

infirm were formed into a veteran guard for the police of the town and the occupation of its forts."

The martial law status thus instituted was maintained till March 13, (the date on which news was received of the ratification of the treaty of peace,) although the British finally retreated to their fleet on January 19th. Meantime, (as is described in the history of the period,) the military authority of the General was exercised in so arbitrary a manner as to bring about a serious collision with the U. S. Judiciary. A citizen and member of the Legislature—Louis Louaillier—having published in a newspaper a remonstrance against an oppressive order for the temporary banishment from the city of the French population, was arrested and confined by General Jackson; and when Judge Hall, of the U. S. District Court, granted a writ of *habeas corpus*, directing the General to bring the prisoner before the court to be dealt with according to law, Jackson caused the Judge himself to be arrested, ("for aiding and abetting and exciting mutiny *in my camp*," ) and confined at the barracks for nearly a week, when he was conducted beyond the limits of the city. Returning after the announcement of peace, the Judge cited the General before the court, adjudged him to have been guilty of a gross contempt of court, and imposed upon him a fine of one thousand dollars.<sup>1</sup>

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1. Debates in 28th Congress in 1842-1843, vols. 12 and 13 of Cong. Globe; Hists. of Louisiana by Martin and Guyarré; Life of Jackson by Eaton; Do. by Kendall; Do. by Parton.

The comments of the Supreme Court of Louisiana in the case of *Johnson v. Duncan*, 3 Martin, 530, with reference to the martial law declared by Gen. Jackson, may here be referred to as indicating the temper of the judiciary at this time. In holding that the proclamation could not legally have the effect of suspending their functions, the court observe:—"The idea that American citizens may be left at the mercy of an individual who may in certain cases, the necessity of which is to be judged of by himself, assume a supreme, overbearing, unbounded power, is not only repugnant to the principles of any free government, but subversive of the very foundations of our own. \* \* \* The proclamation of martial law cannot have had any other effect than that of placing under military authority all the citizens subject to militia service. It is in that sense alone that the vague expression of martial law ought to be understood among us. To give it any larger extent would be trampling upon the constitution and laws of our country." And Lamb's Case, Car. Law. Rep., 330, is cited, in which Judge Bay illustrates the horror with which martial law is commonly regarded by the judiciary, by declaring—"If by martial law is to be understood that dreadful law, the law of arms, \* \* \* I have no hesitation in saying that such a monster could not exist in this land of liberty and freedom." On the other hand,

**As declared by Gen. Scott in Mexico.** The next instance to be noted is that of the declaration of martial law in Mexico by Major General Scott, in his General Orders of 1847,<sup>1</sup> in which also, (as will be hereafter more particularly indicated,) *military commissions* were first instituted for the trial of offenders. The form of the declaration here is:—"Martial law is hereby declared as a supplemental code in and about all cities, towns, camps, posts, hospitals, and other places which may be occupied by any part of the forces of the United States in Mexico, and in and about all columns, escorts, convoys, guards and detachments, of the said forces, while engaged in prosecuting the existing war in and against the said republic and while remaining within the same." But, as has already been remarked,<sup>2</sup> this declaration, (except for purposes of *notice*,) was a superfluous and unnecessary proceeding, adding nothing to the military authority or jurisdiction, since the region and people to which it related were already subject to the *military government* incident to the conquest and occupation of enemy's country.

**As declared in the late war—Proclamations of the President.** It is the period during and immediately succeeding the late civil war that furnishes the most marked illustrations of martial law as specifically proclaimed and declared. Thus, early in the war, the comprehensive proclamation of the President of Sept. 24, 1862, made "subject to martial law" not only insurgent enemies in the insurrectionary States but also "their aiders and abettors within the United States, and all persons discouraging volunteer enlistments, resisting militia drafts, or guilty

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see the views of Gen. Jackson, as expressed in his extended G. O. of March, 1815, in the case of Louaillier, tried by court-martial.

Gen. Jackson's fine was refunded to him, with interest, by Act of Congress of Feb. 16, 1844, nearly thirty years after its imposition, and only in the year before his death.

As to the action of Gen. Jackson in disregarding a writ of *habeas corpus* issued, in Florida, in 1821, by the U. S. Dist. Judge Fromentin, in the case of Col. Collava, then recently Spanish Governor of Pensacola, who had been arrested and confined by Gen. Jackson's order—see Halleck, 379; Parton, Life of Jackson, ch. XLV, p. 614. This instance is not, in a legal point of view, important.

1. G. O. 20 & 287, Hdqrs. of the Army, 1847.

2. See "Military Government Defined," *ante*, p. 18.

of any disloyal practice affording aid and comfort to rebels against the authority of the United States."<sup>1</sup>

- Further, by proclamation of the President of July 5, 1864, martial law was established in the separate State of Kentucky, (not one of the Confederate States;) the reasons for such action being set forth in the preamble as follows:—"Whereas many citizens of the State of Kentucky have joined the forces of the insurgents, and such insurgents have, on several occasions, entered the said State of Kentucky in large force, and, not without aid and comfort furnished by disaffected and disloyal citizens of the United States residing therein, have not only disturbed the public peace, but have overborne the civil authorities and made flagrant civil war, destroying property and life in various parts of that State; And whereas it has been made known to the President of the United States by the officers commanding the national armies, that combinations have been formed in the said State of Kentucky with a purpose of inciting rebel forces to renew the said operations of civil war within the said State, and thereby to embarrass the United States armies now operating in the said States of Virginia and Georgia, and even to endanger their safety:" And it is subjoined, in conclusion, as follows:—"The martial law herein proclaimed, and the things in that respect herein ordered, will not be deemed or taken to interfere with the holding of lawful elections or with the proceedings of the constitutional legislature of Kentucky, or with the administration of justice in the courts of law existing therein between citizens of the United States in suits or proceedings which do not affect the military operations or the constituted authorities of the government of the United States."<sup>2</sup>

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1. This proclamation also suspended the privilege of the writ of *habeas corpus*. See *post*.

2. The privilege of the writ of *habeas corpus* was also suspended by this proclamation. See *post*. As to the declaration of martial law, it was revoked in the next year, by proclamation of Oct. 12, 1865. In this connection, see G. O. 51, Dept. of Ky., 1865, and Circ. No. 3; Id., as to the classes of persons affected by martial law in Kentucky, and its operation in suspending the functions of civil courts therein.

In connection further with these two proclamations, (the only ones by which martial law was in terms declared by the President,) see other executive proclamations, noted *post*, suspending the issue of the writ of *habeas corpus*; also proclamation of March 17, 1865, making amenable to arrest and trial by court-martial "persons dwelling in contiguous foreign territory" who furnish arms or munitions of war to hostile In-

*Action of military commanders.* Of declarations of martial law by military commanders during the late war, (some of which, for reasons already set forth, were unnecessary, the region to which they applied being under or subject to *military government*,) the following may be noticed as the principal:

(1.) By an order of Maj. Gen. Fremont, commanding Western Department, dated August 14, 1861, martial law was 'declared and established in the city and county of St. Louis.' The order appointed Major J. McKinstry Provost Marshal, and directed that 'all orders and regulations issued by him should be respected and obeyed.' That officer thereupon published a proclamation in which it was recited that the power conferred upon him would be exercised only in cases where the civil law was "found to be inadequate to the maintenance of the public peace and the public safety." In a subsequent order he prohibited the wearing of concealed weapons, and later the sale or giving away of any description of fire-arms without a special permit.

Gen. Fremont was succeeded in command by Maj. Gen. Halleck in November, 1861, and by G. O. 34, Dept. of the Mo., of Dec. 26, 1861, martial law was formally declared by the latter in the city of St. Louis, and "in and about all railroads in this State," (Missouri,) "in virtue," as it was specified, "of authority conferred by the President of the United States." It was added:—"It is not intended by this declaration to interfere with the jurisdiction of any civil court which is loyal to the Government of the United States, and which will aid the military authorities in enforcing order and punishing crimes." A subsequent Gen. Order, No. 39 of 1862, reiterates that the previous declaration is not designed to affect the courts, which are to proceed as before in the exercise of their functions, or the operation of the ordinances or laws of the City or State. Later, however, the department commander was obliged to enforce more strictly the martial law status and to suspend in a measure the civil authority.<sup>1</sup>

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dians, "thus enabling them to war upon the settlements," &c.; also—*as relating to a further incident of the same period*—"Executive Order," of April 4, 1865.

1. G. O. 63, 96, Dept. of the Mo., 1863. And see further—as to this same status—Do. 87, Id.; Do. 6, Western Dept., 1861; Do. 2, Dept. of the Miss., 1862. This martial law seems to have been continued in Missouri till March 10, 1865. See G. O. 2, Div. of the Mo., 1865, p. 10-11.

(2.) On April 25, 1862, by G. O. 8 of the Dept. of the South, (including South Carolina, Georgia and Florida,) Maj. Gen. David Hunter, Department Commander, declared martial law within the Department. In a subsequent Order, No. 11 of May 9, he repeated this declaration, adding—"Slavery and martial law in a free country are altogether incompatible; the persons in these three States heretofore held as slaves are therefore declared forever free."

(3.) Upon the occupation by the Union forces of New Orleans in 1862, Maj. Gen. Butler, commanding Department of the Gulf, by proclamation of May 1st, placed the city and its environs under martial law. In this proclamation it was declared, among other things, that:—"All the rights of property, of whatever kind, will be held inviolate, subject only to the laws of the United States." All the inhabitants are enjoined to pursue their usual avocations. \* \* \* All disorders, disturbances of the peace, and crimes of an aggravated nature, interfering with the forces or laws of the United States, will be referred to a military court for trial and punishment. Other misdemeanors will be subject to the municipal authority, if it desires to act. Civil causes between party and party will be referred to the ordinary tribunals. \* \* \* No publication of newspapers, pamphlets, or hand bills, giving accounts of the movements of the soldiers of the United States within this department, reflecting in any way upon the United States, intended in any way to influence the public mind against the United States, will be permitted, and all articles on war news, editorial comments, or correspondence making comments upon the movements of the armies of the United States, must be submitted to the examination of an officer who will be

1. This Order, so far as regards slavery, was, in the President's proclamation of May 19, 1862, declared to be unauthorized and void; the President, as it was expressed, *reserving the power to himself* to emancipate the slaves, when deemed necessary to exercise it. It was in fact exercised in the proclamation of January 1st following.

2. Compare the following extract from the proclamation of May 14, 1861, issued by the same general, as commanding Dept. of Annapolis, upon his occupying Baltimore:—"Private property will not be interfered with by the men under my command, nor allowed to be interfered with by others, except in so far as it may be used to afford aid and comfort to those in rebellion against the government whether here or elsewhere, all of which property, munitions of war, and that are fitted to aid and support the rebellion, will be seized and held subject to confiscation."

detailed for that purpose from these headquarters. \* \* \* All the requirements of martial law will be imposed so long as, in the judgment of the United States authorities, it may be necessary; and while it is desired by these authorities to exercise this government mildly, and after the usages of the past, it must not be supposed that it will not be rigorously and firmly administered as the occasion calls for it."

Sundry features of this *military government*, (which continued to March 18, 1866,) have been referred to under the preceding Title.

(4.) By a proclamation of Maj. Gen. R. C. Schenck, as Commander of the Middle Department, dated Baltimore, June 30, 1863, martial law was declared in Baltimore and the western counties of Maryland, as being required "as a military necessity" by reason of "the immediate presence of a rebel army within the Department and State." The proclamation further specifies as follows:—"The General Commanding gives assurance that this suspension of the civil government within the limits defined shall not extend beyond the necessities of the occasion. All the courts, tribunals and political functionaries of State, county and city authority, are to continue in the discharge of their duties as in times of peace; only in no way interfering with the exercise of the predominant power assumed and asserted by the military authority. All peaceful citizens are required to remain quietly at their homes and in pursuit of their ordinary avocations, except as they may be possibly subject to call for personal service, or other necessary requisitions, for military purposes or uses hereafter. All seditious language or mischievous practices tending to the encouragement of rebellion are especially prohibited, and will be promptly made the subject of observation and treatment. Traitorous and dangerous persons must expect to be dealt with as the public safety may seem to require. 'To save the country is paramount to all other considerations.'"

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1. It was held—June, 1865—by the Judge Advocate General that, though this proclamation had never been in terms revoked, it had, at that date, ceased to be operative, the emergency having sometime ceased to exist. In the case of Mrs. Sarah Hutchins, (G. O. 115, Middle Dept., 1864,) it is alleged in the specification that the offence occurred on November 3, 1864, "in Baltimore, a place under martial law."

2. To this declaration are appended "ORDERS UNDER MARTIAL LAW," as follows:—

ORDERS.—Until further orders, no arms or ammunition shall be sold



(5.) By G. O. 17, Dept. of Kansas, 1862, the Department Commander declared martial law throughout the State of Kansas, with a view to the suppression therein of "*jayhawking*." In G. O. 54 of the same Department, of 1864, a further proclamation was made of martial law within the State, in anticipation of the invasion of the same by the army under Gen. Price. The Order specifies that, as the status thus established is intended to continue only while danger of invasion is apprehended, the functions of the civil authorities will not be disturbed nor the proceedings or processes of the courts interrupted.

(6.) In an Order of the Department of the Ohio, of 1862, martial law was declared within Jefferson county, Kentucky, for the reason as stated that the civil authorities were unable to afford the proper protection to persons or property.<sup>1</sup> In a further Order of the same Department, of 1863, the commanding general, in view of the threatened advance of the forces under Gen. Morgan, de-

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by any dealer or other person within the city and county of Baltimore without a permit from the General Commanding the Military Department, or from such officer as shall be duly authorized to grant the same. Any violation of this order shall subject the party offending to arrest and punishment.

Until further orders, no person will be permitted to leave the city of Baltimore without a pass, properly signed by the Provost Marshal, and any one attempting to violate this order shall be promptly arrested and brought before the Provost Marshal for examination.

Until further orders, no one will be permitted to pass the barricades, or into or out of the city, between the hours of 10 P. M. and 4 o'clock A. M., without giving the proper countersign to the guard in charge.

Until further orders, no club-house or other place of like resort shall remain open, without a permission given by the General Commanding. Any attempt to violate this order will subject the club-house and property to seizure and occupation by the military, and the frequenters, who engage in or encourage such violation, to arrest.

Until further orders, all bars, coffee-houses, drinking saloons and other places of like resort shall be closed between the hours of 8 P. M. and 8 A. M. Any liquor dealer or keeper of a drinking saloon or other person selling intoxicating drinks who violates this order shall be put under arrest, his premises seized and his liquors confiscated for the benefit of the hospitals.

Until further orders, the General Commanding directs that the stores, shops, manufactories and other places of business other than apothecary shops and printing offices of daily journals, be closed at 5 P. M., for the purpose of giving patriotic citizens an opportunity to drill and make themselves expert in the use of arms.

1. G. Field O., No. 2. See *ante* as to the proclamation, subsequent in date, of the President, declaring martial law throughout the State.

clared martial law in Cincinnati, Ohio, and the cities, on the opposite bank of the Ohio River, of Covington and Newport, Kentucky. The Order required that all business be suspended, and that the citizens organize for the common defence.<sup>1</sup>

(7.) A further and more recent instance is the declaration of martial law at New Orleans by the Department Commander, of July 30, 1866, resorted to on the occasion of a *riot*.<sup>2</sup> In another Order, of the next month,<sup>3</sup> it is announced that the martial law thus declared will be continued and enforced "so far as may be required for the preservation of the public peace and the protection of life and property."

(8.) A still later occasion was that of a flood in the Tennessee River at Chattanooga in March, 1867, which imperilled life and property and called for unusual precautions for their protection. At the request of the civil authorities, Captain J. Kline, 25th Infantry, commanding the post, placed the city under martial law and directed the seizure and use, by the military, of boats for the purposes of the moving of household goods, &c.<sup>4</sup> In a communication from the mayor, of March 15th, in which the post commander is formally thanked for his services, it is said:—"Martial law, under ordinary circumstances, is distasteful to a people inclined to the pursuits of civil life; but your action in this case must meet the commendation of all right-thinking people."<sup>5</sup>

(9.) The lawless disturbances caused by the so-called "Kuklux" induced a proclamation of the President, of October 17, 1871, (issued under an authority to be noticed later,) suspending the privilege of the writ of *habeas corpus*, and thus virtually initiating *martial law*, in certain designated counties of South Carolina.

1. G. O. 114. It is added:—"The Commanding General, convinced that no one whose services are necessary for the defence of these cities would care to leave now, places no restriction upon travel."

2. G. O. 60, Dept. of La., 1866. This Order is in full as follows:—"In consequence of the riotous and unlawful proceedings of to-day, Martial Law is proclaimed in the City of New Orleans. Brevet Major General A. V. Kautz is appointed Military Governor of the City. He will make his Headquarters in the City Hall, and his orders will be minutely obeyed in every particular. All civil functionaries will report at once to General Kautz, and will be instructed by him with regard to such duties as they may be hereafter required to perform."

3. G. O. 15, Div. of the Gulf, Aug. 4, 1866.

4. G. O. 12, Hdqrs., Post of Chattanooga, Tenn., March 11, 1867.

5. "American Union" newspaper of Chattanooga, of that date.

Similar action was taken at the same period by the State authorities in North Carolina and Tennessee.

These instances illustrate the nature of martial law as declared and exercised in the United States, and show that it has been resorted to not only pending a war and as a war-measure, but also by way of precaution at periods of public emergency and danger when the civil authorities were apparently powerless to afford adequate protection to life and property.

**The Exercise of Martial Law, as connected with the Suspension of the Writ of Habeas Corpus.** The most considerable and important part of the exercise of martial law is the making of arrests of civilians charged with offences against the laws of war. But to arrest and hold at will, or with a view to trial by a military tribunal, is practically to suspend the citizen's privilege of the writ of *habeas corpus*. On the other hand the suspending of the writ by military authority is essentially an exercise of the power of martial law. Thus the two powers are closely connected, the one substantially including or involving the other,<sup>1</sup> and it becomes material to inquire whether, under the provision of the Constitution relating to the suspension of the privilege of the writ,<sup>2</sup> the President, or a military commander representing him, is authorized to order or effect such suspension.

In the early instance of the "Whiskey Insurrection" in Pennsylvania, in 1794-5, no suspension of the writ was resorted to: sundry of the insurgents were indeed arrested by military authority, but they were duly brought to trial before a civil court.<sup>3</sup>

During the Burr conspiracy of 1806, Brig. Gen. Wilkinson, commanding in Louisiana, without formally suspending the writ, suspended it in fact so far as to disregard writs issued by the local courts, and even to imprison for a brief period a county judge.<sup>4</sup> But in the case of two of the supposed conspirators whom Wil-

1. *Ex parte* Field, 5 Blatchford, 82; 9 Am. L. R., 507.

2. "The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it." Art. I, Sec. 9 § 2.

3. In Shays' Rebellion in Massachusetts, in 1786, the operation of the Habeas Corpus Act was suspended by the Legislature for a limited period. 3 Hildreth, Hist. of U. S., 474.

4. Martin, Hist. of Louisiana; Guyarré, Do.; Randall, Life of Jefferson, vol. 3; Wilkinson's Memoirs.

kinson caused to be arrested under a charge of treason, the Supreme Court of the United States, in passing upon the question of their criminality, expressed incidentally the opinion that the suspension was a power to be exercised by "*the legislature.*"<sup>1</sup> This *dictum* was long accepted as settling that the Constitution was to be construed as empowering not the President but Congress alone to suspend the privilege of the writ.<sup>2</sup>

Early in the recent war, however, the question whether the President was not authorized to exercise the power independently of Congress was raised and considerably discussed. Upon this question having been referred by the President to the Attorney General, the latter, in July, 1861, gave it as his opinion that, while Congress alone could repeal the laws authorizing the issue of the writ, or suspend all right to or privilege of the same in general, the President was empowered to suspend the privilege in cases of particular individuals found necessary to be arrested by him during the emergency on account of complicity with the public enemy.<sup>3</sup> By proclamation of May 10, 1861, the President had already authorized the commander of the Union forces in Florida "to suspend there the writ of *habeas corpus*," if he found it necessary. Later, in an order<sup>4</sup> issued from the War Department on August 13, 1862, he suspended the writ as to persons liable to draft who should absent themselves from their places of residence or from the country in order to avoid it; and subsequently, by his proclamation of Sept. 24, 1862, (heretofore cited as making subject to *martial law* all insurgent enemies, their aiders and abettors throughout the United States,) he further ordered:—"That the writ of *habeas corpus* is suspended in respect to all persons arrested, or who are now, or hereafter during the rebellion shall be, imprisoned in any fort, camp, arsenal, military prison, or other place of confinement by any military authority, or by the sentence of any court-martial or military commission."

Meantime, however, in the leading case of *Ex parte Merry-*

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1. *Ex parte Bollman & Swartwout*, 4 Cranch, 100, *per* Marshall, C. J.

2. *Johnson v. Duncan*, 3 Mart. 532; Story, Com. § 1342.

3. X Opins. 74. And see also, as concurring in the view that the President may be empowered to suspend the writ—*Ex parte* Field, 5. Blatchford, 63; Halleck, 379; Whiting, War Powers, 202; Binney, "The Privilege of the Writ of Habeas Corpus under the Constitution."

4. G. O. 104 of 1862.

man,<sup>1</sup> Chief Justice Taney had held, on circuit at Baltimore, that the power to suspend the writ did not subsist in the Executive but was a legislative function pertaining to Congress alone. The *dictum* of Chief Justice Marshall was thus reasserted as a positive ruling, and this ruling has been concurred in by a series of decisions in the United States and State courts and by other recognized authorities.<sup>2</sup>

Further, Congress, by an express provision of the Act of March 3, 1863, c. 81, specifically vested in the President the authority, 'whenever in his judgment the public safety might require it, to suspend the privilege of the writ in any case arising in any part of the United States,'—thus impliedly asserting that the power so to authorize rested in itself alone.<sup>3</sup> Pursuant to this Act the President issued his proclamation of September 15, 1863, already referred to, in which he suspended the writ throughout the United States and during the existing rebellion, in all cases where, "by the authority of the President of the United States, military, naval, and civil officers of the United States, or any of them, hold persons under their command, or in their custody, either as prisoners of war, spies, or aiders or abettors of the enemy, or officers, soldiers, or seamen enrolled, drafted, or mustered or enlisted in, or belonging to, the land or naval forces of the United States, or as deserters therefrom, or otherwise amenable to military law, or the Rules and Articles of War, or the rules or regulations prescribed for the military or naval service by authority of the President of the United States; or for resisting a draft, or for any other offence against the military or naval service." It is added: "And I do hereby require all magistrates, attorneys, and other civil officers within the United States, and all officers and others in the military and naval services of the

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1. Taney's Decisions, 246.

2. *McCall v. McDowell*, Deady, 233; *Ex parte Benedict*, 4 West. L. M., 449; *Jones v. Seward*, 40 Barb. 563; *People v. Gaul*, 44 Id. 104; *Skeen v. Monkheimer*, 21 Ind. 1; *Griffin v. Wilcox*, 27 Id. 383; *Johnson v. Jones*, 44 Ills. 142; *In re Kemp*, 16 Wis., 359; *In re Oliver*, 17 Id. 681; 1 Bishop, C. L. § 63, 64; Cooley, Prins. Const. Law, 289; Flanders, Expos. Const., 134; 9 Am. L. R., 498.

3. See *In re Murphy*, Woolworth, 141.

Similar legislation was resorted to by the Congress of the Confederate States by Act of Feb. 15, 1864, in which the power of suspension was expressly declared to be "vested solely in Congress." This Act is given in the Appendix, XVI.

United States, to take distinct notice of this suspension, and to give it full effect, and all citizens of the United States to conduct and govern themselves accordingly."

Subsequently, under the authority of the same Act, the President, by proclamation of July 5, 1864, in declaring martial law in the State of Kentucky, suspended also the privilege of the writ of *habeas corpus* in the classes of cases specified in that proclamation, as hereinbefore set forth.<sup>1</sup>

The Act of 1863 expired with the termination of the rebellion in 1866, and no subsequent suspension has been ordered by the President except in the single case of the unlawful combinations of the so-called "Kuklux" in South Carolina in 1871, in which, by proclamations of Oct. 17 and Nov. 10 of that year, issued in accordance with the special authority given by Congress, in the Act of April 20, 1871, c. 22, s. 4,<sup>2</sup> (and limited as to its exercise to the end of the next regular session of Congress,) he suspended the writ in ten counties of that State.<sup>3</sup>

Thus, as a general principle of law, it may be deemed to be settled by the rulings of the courts and weight of legal authority, as well as by the action of Congress and practice of the Executive, that the President is not empowered of his own authority to suspend the privilege of the writ of *habeas corpus*, and that a declaration of martial law made by him or a military commander, in a district not within the theatre of war, will not justify such suspension in the absence of the sanction of Congress. The result must be that martial law proper will in the future rarely be initiated in the United States where Congress has omitted to provide the means for rendering its exercise effectual. But, in the event of a practical exercise of the same in an adequate emergency, and of the consequent arrest and holding by military authority, in good faith and what is believed to be the full and proper performance of duty, of undoubted public

1. See under "Instances illustrating the operation of martial law," *ante*.

2. See the orders, &c., of the President as to the employment of the military forces in making arrests under this Act.

3. Since this case, the President has on several occasions issued proclamations warning turbulent and disorderly persons to disperse and retire to their abodes, according to the terms of Sec. 5300, Rev. Sts., but has not been forced to suspend the writ. See instances of such proclamations referred to in PART III—"I. Employment of the military in aid of the execution of the laws," note.

enemies or other criminals, in temporary disregard of judicial process sued out for their release, it can scarcely be questioned that Congress, if it does not expressly ratify the act, will at least protect or indemnify the officers and soldiers concerned by legislation corresponding to that of the statute of March 2, 1867, c. 155, enacted at the close of active hostilities in the late civil war.<sup>1</sup>

**Jurisdiction of Offences committed by Persons under Martial Law.** It need hardly be remarked that martial law, lawfully declared, creates an exception to the general rule of exclusive subjection to the civil jurisdiction, and renders offences against the laws of war, as well as those of a civil character, triable, at the discretion of the commander, (as governed by a consideration for the public interests and the due administration of justice,) by military tribunals.<sup>2</sup> The powers and procedure of such tribunals will be considered in treating of the Military Commission. The criminal jurisdiction, however, of the civil courts is much less subject to be abridged under Martial Law proper than under Military Government.

## VI. TRIAL AND PUNISHMENT OF OFFENCES UNDER THE LAW OF WAR—THE MILITARY COMMISSION.

### **Authority and Occasion for the Military Commission.**

The *authority* for the military commission is the same as the authority for the making and prosecution of war and for the exercise of military government and martial law. The commission is simply an instrumentality for the more efficient execution of the war powers vested in Congress and the power vested in the President as Commander-in-chief in war. In some instances, as

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1. See the remarks of Chief Justice Chase at the close of his opinion in *Ex parte Milligan*, 4 Wallace, 141. On this subject, Halleck, (p. 380,) expresses himself as follows:—"Even if it were plain that the words of the Constitution were intended to give this power *exclusively* to Congress, we think that in a case of public danger, at once so imminent and grave as to admit of no other remedy, the maxim *salus populi suprema lex* should form the rule of action, and that a suspension of this writ, by the executive and military authorities of the United States, would be justified by the pressure of a visible public necessity: if an act of indemnity were required, it would be the duty of Congress to pass it." Compare also Pratt, 216.

2. See Cooley, Prins. Const. Law, 138.

will presently be noted, Congress has specifically recognized the military commission as the proper war-court, and in terms provided for the trial thereby of certain offences. In general, however, it has left it to the President, and the military commanders representing him, to employ the commission, as occasion may require, for the investigation and punishment of violations of the laws of war and other offences not cognizable by court-martial.<sup>1</sup>

The *occasion* for the military commission arises principally from the fact that the jurisdiction of the court-martial proper, in our law, is restricted by statute almost exclusively to members of the military force and to certain specific offences defined in a written code. It does not extend to many criminal acts, especially of civilians, peculiar to time of war; and for the trial of these a different tribunal is required. A commander indeed, where authorized to constitute a purely war-court, may designate it by any convenient name; he may style it a "court-martial," and, though not a court-martial proper, it will still be a legal body under the laws of war. But to employ the same name for the two kinds of court could scarcely but result in confusion and in questions as to jurisdiction and power of punishment. Hence, in our military law, the distinctive name of *military commission* has been adopted for the exclusively war-court, which also, as will hereafter be illustrated, is essentially a distinct tribunal from the court-martial of the Articles of war.

Abroad, the court-martial is employed for the cognizance of offences not only of the officers and soldiers of the army but also of non-military persons subjected to military authority in time of war or rebellion. A recent English writer, in approving the distinction established in this country between the court-martial and the military commission, observes:—"In England both descriptions of courts are called courts-martial, and the general public are consequently not able to discriminate between the two."<sup>2</sup>

In our early wars, indeed, before the distinction between the two

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1. See XI Opins. At. Gen., 305.

2. Capt. Douglass Jones, Notes on Military Law, p. 3. It is nevertheless the fact that the English court-martial under military government or martial law is distinguished in material particulars from the regular court-martial, and mainly in that it is not governed by the same rules as to its composition, or as to its power of sentence, and that it is more summary in its proceeding. See Hough, 383; Id. (P.) 516, 531, 536; Finlason, Coms. on Mar. Law, 9, 16, 44, 127, 142, 243-5; *In re Egan*, 5 Blatchford, 321.



species of court was inaugurated, cases which would now be referred to a military commission were brought to trial before special courts-martial. Such was the case of Joshua Hett Smith, tried by court-martial in 1780, under a Resolution of Congress, for assisting and combining with Gen. Arnold in his treasonable proceedings. Such too was the case of Louis Louaillier, brought to trial for being a spy, and for other offences, before a General Court-Martial convened by Gen. Jackson in New Orleans, in March, 1815. Such also were the cases of Arbuthnot and Ambrister, tried by court-martial, in Florida, in April, 1818, for inciting and assisting the Creek Indians to make war against the United States, and convicted and executed as noticed in a previous Chapter.<sup>1</sup>

**History of the Military Commission in our law—Gen. Scott's "Military Commission."** It was not till 1847, upon the occupation by our forces of the territory of Mexico in the war with that nation, that the military commission was, as such, initiated. In G. O. 20 of Feb. 19, of that year, issued from the Headquarters of the Army at Tampico, (as slightly added to by G. O. 190 and 287 of the same series,) it was announced that—"Assassination, murder, poisoning, rape, or the attempt to commit either, malicious stabbing or maiming, malicious assault and battery, robbery, theft, the wanton desecration of churches, cemeteries, or other religious edifices and fixtures, the interruption of religious ceremonies, and the destruction, except by order of a superior officer, of public or private property," whether committed by Mexicans or other civilians in Mexico against individuals of the U. S. military forces, or by such individuals against other such individuals or against Mexicans or civilians; as well as the purchase by Mexicans or civilians in Mexico, from soldiers, of horses, arms, ammunition, equipments or clothing,—should be brought to trial before *military commissions*.

Thus initiated, commissions were repeatedly convened by Gen. Scott, as also by Gens. Wool and Taylor, mostly in 1847.<sup>2</sup> The

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1. As to the action of Gen. Jackson in the case of Ambrister, see *ante*, Vol. I, p. 657.

2. Such commissions were ordered by Gen. Scott in G. O. 81, 83, 121, 124, 147, 171, 194, 215, 239, 267, 270, 273, 292, 334, 335, 380, 392, of 1847; Do. 9 of 1848;—by Gen. Taylor in Do. 66, 106, 112, 121, of 1847;—by Gen. Wool in Do. 140, 179, 216, 463, 476, 514, of 1847. And

offences tried thereby were not always confined to those specified in the Orders as above cited; such charges as "Manslaughter," "Burglary," "Picking pockets," "Carrying a concealed weapon," "Threatening the lives of soldiers," "Riotous conduct," "Attempting to pass counterfeit money," "Obtaining money under false pretences," "Fraud," "Attempt to defraud the United States," "Introducing spirituous liquor into U. S. barracks"—being also found in the G. O. promulgating the proceedings of trials.

*Gen. Scott's "Council of war."* The acts thus made punishable by military commissions were mainly criminal offences of the class cognizable by the civil courts in time of peace. A further description of offences, *viz.* those against the *laws of war*, yet remained to be provided for. For the trial and punishment of these offences there was inaugurated by Gen. Scott a separate tribunal designated as the *council of war*, not however materially differing from the military commission except in the class of cases referred to it. The principal charges referred to and passed upon by these courts were Guerilla warfare or Violation of the Laws of War by Guerilleros, and Enticing or Attempting to entice soldiers to desert the U. S. service.<sup>1</sup> The trials, however, were few; this branch of jurisdiction not then becoming fully developed.

*Military commissions in the late war.* The military commission and council of war of the Mexican war were together the originals of the Military Commission as so extensively employed during the recent war, and as recognized in our existing statute law; the two jurisdictions of the earlier commission and council respectively being *united* in the later war-court, for which the general designation of "military commission" was retained as the preferable one.<sup>2</sup> Coming down to the period indicated,

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note, in V Opins. At. Gen., 55, the case of Capt. Foster who, for the alleged murder of another officer, was put upon trial before a military commission convened in Mexico by Gen. Scott, but escaped pending the hearing. As to the occasion for and legality of these commissions, see Halleck, 783.

1. See cases of such Councils in G. O. 181, 184, 187, 195, 291, Hdqrs. of Army, 1847; Do. 22, 35, 41, Id., 1848. G. O. 372 of 1847 relates to their composition, powers, &c.

2. The term "council of war," as a designation for a *court*, has not since reappeared in our law or practice.

we find several instances of military commissions convened as early as in 1861.<sup>1</sup> In a General Order, (No. 1,) of Jan. 1, 1862, Maj. Gen. Halleck, commanding Department of Missouri, first defined at length to his command their nature and jurisdiction as then understood; similar action was taken by other department commanders;<sup>2</sup> and these courts, thus introduced, soon came to be generally adopted as authorized and established tribunals for time of war and rebellion.

*Statutory recognition and provision.* Presently also they were recognized as legal courts, and their jurisdiction in some cases added to, by express statute. Sec. 30 of the Act of March 3, 1863, c. 75, the original of the present Art. 58, provided that murder, manslaughter, robbery, larceny, and certain other specified crimes, when committed by military persons in time of war or rebellion, should be punishable by sentence of court-martial or *military commission*.<sup>3</sup> So, sec. 38 of the same Act, in amending the previously existing statute relating to spies, provided that this class of offenders should be triable by *military commission* as well as court-martial, and this form is still retained in the military code—Sec. 1343, Rev. Sts. In the following year, by Act of July 2, 1864, c. 215, commanders of departments and armies were authorized to execute sentences imposed by *military commissions* upon guerillas. Next, by Act of July 4, 1864, c. 253, s. 6, (not now in force,) inspectors and other civil officials and employees of the quartermaster department of the army were made amenable to trial by *military commission* (or court-martial) for fraud, neglect of duty and accepting bribes. Meanwhile the Act of June 20, 1864, c. 145, s. 5 & 6, in establishing the Bureau of Military Justice, provided for the revision and recording thereby of the proceedings of *military commissions* equally as of those of other military courts, and this provision was in substance repeated in the sections of the subsequent Acts of July 28, 1866,

1. G. O. 14, 20, 118, Western Dept., 1861; Do. 24, 25, Dept. of N. E. Va., 1861; Do. 68, Army of the Potomac, 1861.

2. See, for example, G. O. 23, Dept. of the Gulf, 1862; Do. 7, Dept. of Kans., 1862; Do. 87, Dept. of N. Mex., 1862; Do. 150, Dept. of the Ohio, 1863; Do. 57, Dept. of Va. & No. Ca., 1863; Do. 27, Dept. of the N. West, 1864.

3. The words "or military commission" were, apparently inadvertently, omitted from the Article as inserted in the Revised Statutes.

and June 23, 1874, (Sec. 1199, Rev. Sts.,) relating to the same branch of the service. In the meantime the Act of March 3, 1865, c. 91, establishing an asylum for disabled volunteers, appropriated as one of its means of support all fines adjudged against volunteer officers and soldiers by sentence either of court-martial *or military commission*—a provision re-enacted in the subsequent statute on the same subject of March 21, 1866, c. 21, and retained in Sec. 4831, Rev. Sts. A further and the latest specific authorization of the employment of the military commission as a court is found in the "Reconstruction Act" of March 2, 1867, c. 153, s. 3 & 4, to be treated of under the next Title. A pointed contemporaneous recognition of such tribunal is that of the provision of March 2, 1867, c. 155, legalizing proceedings under martial law, trials by *military commission*, &c., had during the war. A later instance occurs in s. 1 of the Act of March 3, 1873, c. 249, (now Sec. 1344, Rev. Sts.,) establishing a general military prison, (that now at Fort Leavenworth, Kansas,) for the confinement, &c., of offenders convicted before "any court-martial *or military commission* in the United States." Further statutory recognitions of the commission as a tribunal known to our law are contained in the series of Army Appropriation Acts from that of June 15, 1864, to the most recent of March 3, 1885, in all of which, (with exceptions between 1872 and 1876,) are items of appropriation for the "expenses of courts-martial, *military commissions*, and courts of inquiry," or for the "compensation of witnesses" or "clerks and witnesses" at or before the same.

***Executive and judicial, &c., recognition.*** The military commission has also been recognized as an authorized provisional tribunal in proclamations and orders of the President and in rulings and opinions of the courts and law officers of the government. It was referred to in the proclamation of Sept. 24, 1862, as an authorized court for the trial of the offences of persons under martial law, and its proceedings and sentences have been approved and executed in and by numerous General Orders issued through the War Department, of which some of the principal will hereafter be cited.<sup>1</sup> The Supreme Court of the United

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1. It is recognized in the recent G. O. 75 of 1883, which provides for the forwarding of records of military commissions, equally as of courts-martial, to the Judge Advocate General.

States has acknowledged the validity of its judgments in leading cases,<sup>1</sup> and other courts of the United States and of the States have equally accepted it as a legal body.<sup>2</sup> In an important adjudication the Supreme Court of Tennessee refers to it as "a tribunal now (1870) as well known and recognized in the laws of the United States as a court-martial."<sup>3</sup> Further the Attorneys (and Solicitors) General have repeatedly had occasion to acknowledge its authority and support its jurisdiction; as, for example, in such cases as those of the conspirators concerned in the assassination of President Lincoln,<sup>4</sup> of Weaver, convicted of murder by military commission in the Reconstruction period,<sup>5</sup> of the Modoc Indians concerned in the killing of Gen. Canby and Rev. E. Thomas,<sup>6</sup> and other less marked instances.<sup>7</sup>

**Frequency in the late war.** Thus sanctioned, these tribunals, pending the civil war, and down to the termination of the operation of the Reconstruction Laws, must have tried and given judgment in upwards of two thousand cases, promulgated in G. O. of the War Department and of the various military departments and armies. Of these cases the principal historically, as well as the more material in a legal point of view, have been, or will be, referred to in the course of the present PART of this work.

**Constitution of the Military Commission.** In the absence of any statute prescribing by whom military commissions shall be constituted, they have been constituted in practice by the same commanders as are empowered by Arts. 72 and 73 to order general courts-martial, to wit commanders of departments, armies, divisions, and separate brigades.<sup>8</sup> The President, as

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1. *Ex parte* Vallandigham, 1 Wallace, 243; *Coleman v. Tennessee*, 97 U. S., 509.

2. *In re* Egan, 5 Blatchford, 319; In the matter of Martin, 45 Barb. 146; *Ex parte* Bright, 1 Utah, 145.

3. *State v. Stillman*, 7 Cold. 352.

4. XI Opins. At. Gen., 297.

5. XIII Id., 59.

6. XIV Id., 249.

7. See V Id., 55; XII Id., 332.

8. As to the general rule, that military commissions are constituted and composed, and their proceedings are conducted, similarly to gen-

Commander-in-chief, may of course assemble military commissions as he may assemble courts-martial. Commanders of "districts" have sometimes, and legally under the general law of war and military government, convened these tribunals, though their commands have been less than a brigade; but such instances have been rare. The provisions of the Articles of war indicating by whom the court is to be constituted where the commander who would regularly order it is in fact the prosecutor or accuser, apply in terms only to general courts-martial, and are not *required* to be observed in the convening of the more summary tribunals under consideration. Where, however, an unreasonable delay will not thereby be caused, or the interests of the service or of the public otherwise prejudiced, such provisions may well, as a measure of justice or expediency, be observed.<sup>1</sup>

**Composition.** Following the analogy of courts-martial, military commissions in this country have invariably been composed of commissioned officers of the army. Strictly legally they might indeed be composed otherwise should the commander *will* it—as, for example, in part of civilians or of enlisted men. The court-martial convened under martial law by Gov. Eyre, in Jamaica in 1865, for the trial of Geo. W. Gordon, was a mixed court of one military and two naval officers, and it was in regard to this court that D'Israeli observed in Parliament that—"in the state of martial law there can be no irregularity in the composition of the court, as the best court that can be got must be assembled."<sup>2</sup>

The *rank* of the members of a military commission is legally immaterial. In a case indeed, (which must be rare,) of a trial of an officer of the army by such a tribunal, the provision of Art. 79 as to the relative rank of the members will, if practicable, properly be regarded.

In the absence of any law fixing the *number* of members of a

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eral courts-martial—see G. O. 20 of 1847, (Gen. Scott;) Do. 1, 7, 33, Dept. of the Mo., 1862; Do. 150, Dept. of the Ohio, 1863; Do. 27, Dept. of the N. West, 1864; 1 Bishop, C. L. § 45, 52; DIGEST, 326. As to the procedure of military courts under martial law, the English writer Pratt observes, (p. 216,)—"The forms of military law should, as far as practicable, be adhered to."

1. See G. C. M. O. 11, Dept. of Texas, 1866.

2. Jones, Notes on Martial Law, 11; Finlason, History of the Jamaica Case, 111. In *Queen v. Nelson & Brand*, Cockburn C. J. commented

military commission, the same may legally be composed of any number in the discretion of the convening authority. A commission of a single member would be as strictly legal as would be one of thirteen members. In his General Orders already cited,<sup>1</sup> Gen. Scott directed that military commissions should be governed as to their composition, &c., by the provisions of the Articles of war prescribing the number of members, &c., for courts-martial: as to councils of war, it was specified that they should consist of "not less than three nor more than thirteen officers." In Gen. Halleck's Order of Jan. 1, 1862, heretofore noticed,<sup>2</sup> it was declared:—"They" (military commissions) "will be composed of not less than three members, one of whom will act as judge advocate or recorder where no officer is designated for that duty. A larger number will be detailed where the public service will permit." In practice during the late war, while commissions were most commonly constituted with five members, three was a not unusual number, and was regarded as the proper *minimum*.<sup>3</sup> The court in Vallandigham's case was convened with nine members of whom seven acted on the trial. In practice also a *separate officer* has been almost invariably detailed as *judge advocate*.<sup>4</sup>

**Jurisdiction—As to place.** (1.) A military commission, (except where otherwise authorized by statute,) can legally assume jurisdiction only of offences committed within the field of the command of the convening commander. Thus a commission ordered

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upon the composition of this court as unauthorized—as of course it was by the law governing courts-martial proper. It appears from the report of the Commissioners on the Jamaica Case, (Finlason, Hist., p. 110,) that this court had been preceded, during the same exigency, by one "consisting partly of members of the legislature." In the Demerara Case, in 1823, a militia officer, (really the head of the colonial judiciary, commissioned *pro hac vice* in the militia,) was associated with officers of the army on the court-martial which tried missionary Smith, a civilian. 2 Hansard, XI, 972.

1. G. O. 20, 190, 287, of 1847.
2. G. O. 1, Dept. of the Mo., 1862.
3. DIGEST, 327.
4. The ruling, however, in G. C. M. O. 267 of 1865, that the proceedings of a military commission for which no judge advocate had been detailed were on that account "*illegal*," was erroneous, since whether such a tribunal shall or not be supplied with a judge advocate, is, in the absence of law on the subject, a matter in the discretion of the commander.

by a commander exercising *military government*, by virtue of his occupation, by his army, of territory of the enemy, cannot take cognizance of an offence committed without such territory.<sup>1</sup> (2.) The place must be the theatre of war or a place where military government or martial law may legally be exercised; otherwise a military commission, (unless specially empowered by statute,) will have no jurisdiction of offences committed there.<sup>2</sup> The ruling in the leading case of *Ex parte Milligan*,<sup>3</sup> that a military commission, which had assumed jurisdiction of offences committed in 1862 in Indiana,—a locality not involved in war nor subject to any form of military dominion,—had exceeded its powers, has been referred to under the previous Titles, where also the fields of military government and martial law have been defined. (3.) It has further been held by English authorities that, to give jurisdiction to the war-court, the *trial* must be had within the theatre of war, military government, or martial law; that, if held elsewhere, and where the civil courts are open and available, the proceedings and sentence will be *coram non judice*.<sup>4</sup> Thus it is considered by Finlason that the trial, by a military court, of Wolf Tone in 1798, was illegal because he was tried in Dublin outside of the region of law and martial law.<sup>5</sup>

1. See Finlason, Repression of Riot and Rebellion, 106; Franklyn, Outlines of Mar. Law, 85; Pratt, 216; G. O. 125, Second Mil. Dist., 1867; G. O. 20 of 1847, (Gen. Scott.)

In the Jamaica Case, it was held by Chief Justice Cockburn, in *Queen v. Nelson & Brand*, that Governor Eyre acted illegally in arresting Gordon at Kingston, outside the "proclaimed district," (the district placed by the Governor's proclamation under martial law,) where he would have been entitled to a jury trial in a civil court, and removing him within that district for trial and punishment before a martial court. Finlason, Hist. of the Jamaica Case; Jones, 11, 12; Franklyn, 85; Pratt, 216. In *Queen v. Eyre*, Blackburn J. held that the removal was justifiable. Finlason, Hist. Jamaica Case; Do., Report of Case of *Queen v. Eyre*; Solicitors' Journal, vol. 12, p. 674.

2. See Clode, M. L., 189.

3. 4 Wallace, 2. And see *Milligan v. Hovey*, 3 Bissell, 13; *Skeen v. Monkheimer*, 21 Ind., 1; *Murphy's Case*, Woolworth, 141; *Devlin's Case*, 12 Ct. Cl., 266; Id., XII Opins. At. Gen., 128; G. O. 7, Dept. of Kans., 1862; Do. 37, Id., 1864; Do. 115, Dept. of the Mo., 1864. Compare, in this connection, the argument of Hon. J. A. Bingham, on the Trial of the Assassins of President Lincoln.

4. See Clode, M. L., 189.

5. Finlason, Coms. on Mar. Law, p. 4-5, 129. And see this trial, reported in 27 Howell's St. T., 615.



These rules which have their origin in the fact that war, being an exceptional status, can authorize the exercise of military power and jurisdiction only within the limits—as to place, time, and subjects—of its actual existence and operation, have not always been strictly regarded in our practice. A singular instance of their disregard during the late war is presented by the case of T. E. Hogg and his six associates, who, for the alleged offence of taking passage upon a U. S. merchant vessel at Panama, (a foreign country,) in November, 1864, with the secret purpose of subsequently seizing by force and arms the ship and cargo in the interest of the Southern confederacy, were, upon apprehension, transported to, and tried by military commission at, San Francisco, a place quite without the theatre of the war.<sup>1</sup>

*As to time.* An offence, to be brought within the cognizance of a military commission, must have been committed within the period of the war or of the exercise of military government or martial law. As in the ordinary criminal law one cannot legally be punished for what is not an offence at the time of the sentence,<sup>2</sup> so a military commission cannot, (in the absence of specific statutory authority,) legally assume jurisdiction of, or impose a punishment for, an offence committed either before or after the war or other exigency authorizing the exercise of military power.<sup>3</sup> Thus, a military commander, in the exercise of military government over enemy's territory occupied by his army, cannot, with whatever good intention, legally bring to trial before military commissions ordered by him offenders whose crimes were committed prior to the occupation. So, while the jurisdiction may be continued after active hostilities have ceased, it cannot be

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1. G. O. 52, Dept. of the Pacific, 1865. They were all sentenced to death, but their sentences were commuted to imprisonment in a penitentiary.

2. *Com. v. Duane*, 1 Binney, 601; *Anon.*, 1 Washington, 84; *U. S. v. Tynen*, 11 Wallace, 88; *U. S. v. Finlay*, 1 Abbott, U. S. R., 364.

3. See Finlason, *Coms. on Mar. Law*, 53; Clode, *M. L.*, 189; Thring, *Crim. Law of Navy*, 42-3; Wells on *Jurisdiction*, 577; XII *Opins. At. Gen.*, 200; G. O. 26 of 1866; Do. 12, Dept. of the South, 1868; Do. 9, First Mil. Dist., 1870; *DIGEST*, 333. "Martial law is not retrospective. An offender cannot be tried for a crime committed before martial law was proclaimed." Pratt, 216. And see Jones, 12. The jurisdiction of such a tribunal is "determined and limited by the period (and territorial extent) of the military occupation." G. O. 125, Second Mil. Dist., 1867.

maintained after the date of a peace or other form of absolute discontinuance, by the competent authority, of the war status. Thus, in the case, already referred to, of Capt. Foster, of the Georgia volunteers, charged with the murder of Lieut. Goff, Pa. vols., in Mexico, pending the Mexican war, it was held by Atty. Gen. Toucey that, the temporary military government "having ceased by the restoration of the Mexican authorities, neither the offence nor any prosecution for it can any longer, in contemplation of law, have existence."<sup>1</sup> So, where the status has been that of *martial law proper*, the jurisdiction expires with the formal revocation of the declaration of the same, or, in the absence of a formal revocation, with the complete passing off of the exigency.<sup>2</sup> Where trials, or proceedings for trials, founded on martial law, are pending, the status should be preserved for the purposes of such trials, and till the findings, and sentences if any, are finally acted upon.

*As to persons.* From what has heretofore been said in regard to the application of the laws of war to enemies in arms, and their operation under a state of military government or martial law, it will have been seen that the classes of persons who in our law may become subject to the jurisdiction of military commissions are the following: (1.) Individuals of the enemy's army who have been guilty of illegitimate warfare or other offences in violation of the laws of war; (2.) Inhabitants of enemy's country occupied and held by the right of conquest; (3.) Inhabitants of places or districts under martial law; (4.) Officers and soldiers of our own army, or persons serving with it in the field, who, in time of war, become chargeable with crimes or offences not cognizable by the criminal courts or under the Articles of war.

Of the *first* class are persons in the military service of the enemy who have been guilty of any of the descriptions of offences

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1. V Opins., 55. The case of the Modoc Indians, tried, in July, 1873, by military commission after hostilities had been finally concluded, may seem to have been an exception to the general rule laid down under this head. The jurisdiction assumed by the government in this instance is defended as follows by Atty. Gen. Williams:—"Doubtless the war with the Modocs is practically ended, unless some of them should escape and renew hostilities. But it is the right of the United States, as there is no agreement for peace, to determine for themselves whether or not anything more ought to be done for the protection of the country or the punishment of crimes growing out of the war." XIV Opins., 253.

2. See *In the matter of Martin*, 45 Barb. 146; also *Finlason*, Coms. on Mar. Law, 4, 5, 130, as to *Crogan's* case.

specified under a previous Title<sup>1</sup> as violations of the laws of war;—as those, for example, who have assumed the rôle of the spy, or have taken part in guerilla raids, or the killing, robbery, &c., of defenceless persons or prisoners of war, or have come within our lines to recruit soldiers or for other unauthorized purpose, or have violated a flag of truce or committed other act of treachery or perfidy, or, as paroled prisoners of war, have violated their parole.

The *second* and *third* classes embrace much the greater number of individuals who, in our late war and the war with Mexico, were brought to trial before the tribunal under consideration. Among the numerous cases of persons so tried were included upwards of one hundred cases of women. The number of these offenders is illustrated by the great variety of offences and phases of offence of which they were convicted, as specified in the General Orders of the period and noticed under the next head.

The greater part of the offenders embraced in the *fourth* class have been military persons tried under sec. 30, Act of March 3, 1863, or who became amenable to military commission because of criminal offences committed in places where, by reason of war and military occupation, or of martial law, the ordinary criminal courts were closed. The others of this class were parties who became so amenable by reason of violations of the laws of war or offences of a military character, not included among the acts made punishable by the code of Articles of war. Besides officers and soldiers, there are comprised in this category camp-followers and other civilians employed by the government in connection with the army in war. Thus, in the G. O. of the period of the late war, there are found, (as tried by military commission,) sutlers, officers' servants, teamsters, persons employed on government steamers and transports, or otherwise in the quartermaster, provost marshal and other staff corps, as also individuals serving in such capacities as veterinary surgeon,<sup>2</sup> government detective,<sup>3</sup>

1. Title III, *ante*. That *Indians* may be included in this class, see case of Modocs heretofore referred to; also cases in G. O. 120 of 1863, G. C. M. O. 508 of 1865, and G. O. 86 of 1866—of Sioux Indians concerned in murders and other crimes committed in Minnesota in 1862. That a military commission can take cognizance of violations of the laws of war by Indians, only when their *tribe* is involved in war with the United States, see DIGEST, 331.

2. G. O. 16, Dept. of the Mo., 1862.

3. G. O. 51, Dept. of the Mo., 1864; Do. 6, Dept. of Va., 1866.

medical cadet,<sup>1</sup> lieutenant in the revenue service,<sup>2</sup> special agent of the Treasury,<sup>3</sup> newspaper correspondent,<sup>4</sup> &c.

*As to offences.* In the war with Mexico, as has heretofore been noticed, the tribunal known as the "military commission" was employed for the trial and punishment of the ordinary crimes such as in a state of peace would have been taken cognizance of by the criminal courts, while violations of the laws of war were referred to another tribunal designated as "council of war." In the simpler system matured in our recent war both jurisdictions were, as has been seen, united in one court for which was preferably retained the name of military commission. The offences cognizable by military commissions may thus be classed as follows: (1.) Crimes and statutory offences cognizable by State or U. S. courts, and which would properly be tried by such courts if open and acting; (2.) Violations of the laws and usages of war cognizable by military tribunals only; (3.) Breaches of military orders or regulations for which offenders are not legally triable by court-martial under the Articles of war.

Of the offences of the *first* class, those most frequently brought to trial before military commissions during the late war, as shown by the General Orders, were murder, manslaughter, robbery, larceny, burglary, rape, arson, assault and battery, and attempts to commit the same; criminal conspiracies,<sup>5</sup> riot, perjury, bribery,

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1. G. O. 13, Dept. of Va. & No. Ca., 1864.

2. G. C. M. O. 308 of 1864; G. O. 77, Dept. of Va. & No. Ca., 1864.

3. G. O. 55, Dept. of Ala., 1865; Do. 8, Id., 1866.

4. G. O. 29, Army of the Potomac, 1863.

5. Among the conspiracies of this class, or of the first and second classes combined, may here be noted the following:—that of Bowles, Milligan and Horsey, convicted of conspiring together, and with other members of the so-called "Order of American Knights" or "Sons of Liberty," against the U. S. Government, and in the interest of the Rebellion, (G. C. M. O. 214, of 1865;)—that of Herold, Payne and others, convicted of conspiring with John Wilkes Booth, Jefferson Davis and sundry other persons in the assassination of President Lincoln and the attempted assassination of the Secretary of State, Mr. Seward, (G. C. M. O. 356 of 1865;)—that of Capt. Henry Wirz of the confederate army, convicted of conspiring with Jefferson Davis, James A. Seddon, Howell Cobb, John H. Winder, Richard B. Winder and others, against the lives and health of Union soldiers held as prisoners of war at Andersonville, Ga., (G. C. M. O. 607 of 1865;)—that of William Murphy, convicted of conspiring with Davis, Seddon, Judah P. Benjamin and others, to burn and destroy boats on the western rivers, (G. C. M. O. 107 of

accepting bribes, forgery, fraud,<sup>1</sup> embezzlement, misappropriation or other illegal disposition of public property, receiving stolen goods, obtaining money or property under false pretences, making or uttering counterfeit money, uttering false Treasury notes, breaches of the peace and disorderly conduct, keeping a disorderly house, selling obscene books, &c., malicious mischief or trespass, carrying concealed weapons, abuse of official authority by civil officials, resisting or evading the draft, discouraging enlistments, purchasing arms, clothing, &c., from soldiers, in violation of Sec. 5438, Rev. Sts., aiding desertion, &c., in violation of Sec. 5455, Rev. Sts. "*Treason*"—it may be added—was not unfrequently charged, but mostly as a name for some violation of the class next to be mentioned.

Of the *second* class, of offences in violation of the laws and usages of war, those principally, in the experience of our wars, made the subject of charges and trial, have been—breaches of the law of non-intercourse with the enemy, such as running or attempting to run a blockade;<sup>2</sup> unauthorized contracting, trading or dealing with, enemies, or furnishing them with money, arms, provisions, medicines, &c.;<sup>3</sup> conveying to or from them dispatches, letters, or other communications, passing the lines for any purpose without a permit, or coming back after being sent through the lines and ordered not to return; aiding the enemy by harbor-

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1866;—that of the persons concerned in the resisting and defeating of the draft, especially in Carbon, Columbia, Schuylkill, Clearfield and Luzerne Counties, Pennsylvania, in 1864-5, (G. O. 23, 64, 67, 68, 69, Dept. of the Susquehanna, 1864; Do. 82, 85, Dept. of Pa., 1864; Do. 4, 6, 36, Id., 1865;—that of G. St. Leger Grenfel and his associates, (Charles Walsh, Buckner S. Morris, R. T. Semmes and others,) convicted of an attempt to release the confederate prisoners of war at Camp Douglass, near Chicago, and to lay waste and destroy that city, (G. O. 30, Northern Dept., 1865;—that of T. E. Hogg and others convicted of being concerned in the attempt to seize the steamer *Salvador* at Panama, in 1864, (G. O. 27, Dept. of the Pacific, 1865.)

1. Among the various forms of *fraud* charged is that of defacing or altering the "U. S." brand on public animals, with fraudulent intent. See cases in G. C. M. O. 488 of 1865; G. O. 111, Dept. of the Mo., 1863; Do. 72, Dept. of Ark., 1864.

2. See cases of running the blockade and conveying munitions to the enemy, in G. C. M. O. 254, 338, 344, of 1864.

3. In this class is included the offence, several times brought to trial, of selling contraband goods, with a view to their being carried secretly through the lines to the enemy, by other persons. See convictions in G. C. M. O. 398 of 1864; Do. 55, 57, 58, 74, of 1865.

ing his spies, emissaries, &c., assisting his people or friends to cross the lines into his country, acting as guide to his troops, aiding the escape of his soldiers held as prisoners of war,<sup>1</sup> secretly recruiting for his army,<sup>2</sup> negotiating and circulating his currency or securities—as confederate notes or bonds in the late war,<sup>3</sup> hostile or disloyal acts, or publications or declarations calculated to excite opposition to the federal government or sympathy with the enemy,<sup>4</sup> &c.; engaging in illegal warfare as a guerilla, or by the deliberate burning, or other destruction of boats, trains, bridges, buildings, &c., acting as a spy, taking life or obtaining any advantage by means of treachery; violation of a parole<sup>5</sup> or of an oath of allegiance or amnesty,<sup>6</sup> breach of bond given for loyal behaviour, good conduct, &c.;<sup>7</sup> resistance to the constituted military authority, bribing or attempting to bribe officers or soldiers or the constituted civil officials; kidnapping or returning

1. G. O. 55, Div. W. Miss., 1864; Do. 47, Dept. of the Mo., 1864; Do. 75, Dept. of the Ark., 1864; Do. 30, Northern Dept., 1865.

2. G. O. 114 of 1863; G. C. M. O. 155, 249, of 1864.

3. G. O. 135, 169, Dept. of the Mo., 1864; Do. 35, Middle Dept., 1865. And compare *Horn v. Lockhart*, 17 Wallace, 580.

4. G. C. M. O. 270, 273, 294, of 1864; Do. 214 of 1865, (case of Bowles, Milligan, and Horsey;) G. O. 7, Dept. of the Mo., 1862; Do. 148, Id., 1863; Do. 86, 154, Id., 1864; Do. 68, Dept. of the Ohio, 1863, (case of Vallandigham;) Do. 121, Middle Dept., 1864; Do. 24, 67, Dept. of Susquehanna, 1864; Do. 5, Dept. of N. Mex., 1864; Do. 1, Dept. of No. Ca., 1866. And see cases in the following Orders, of treating with disrespect the U. S. flag by pulling down, tearing, defacing, &c.: S. O. 70, Dept. of the Gulf, 1862; G. O. 28, Id., 1865; Do. 50, Middle Dept., 1863; Do. 50, Dept. of the Mo., 1863; Do. 8, Dept. of the Miss., 1866; Do. 26, Fourth Mil. Dist., 1867. And see remarks of Maj. Gen. Thomas in G. O. 21, Dept. of the Tenn., 1867. In this list also may be classed the cases in which the offender is charged as—"Being a bad and dangerous man," or in terms to that effect. See G. O. 229 of 1863; G. C. M. O. 304 of 1864; G. O. 19, Dept. of the Miss., 1862; Do. 34, Dept. of the Mo., 1863; Do. 41, Middle Mil. Dept., 1865; Do. 11, Dept. of Fla., 1866.

5. Violations of parole by paroled prisoners of war are noted under TITLE III, *ante*. As to cases of violation of a parole given not to render aid or service to the enemy, see G. O. 20, Dept. of the Mo., 1862; Do. 34, 82, Id., 1863; Do. 43, Middle Dept., 1864; Do. 28, Id., 1865.

6. See G. O. 229 of 1863, where a conviction of a violation of an oath of allegiance was disapproved on the ground that the violation consisted not in acts but in words only.

7. G. O. 34, Dept. of the Mo., 1863; Do. 63, Sixteenth Army Corps, 1863.

persons to slavery in disregard of the President's proclamation of freedom to the slaves, of Jan. 1, 1863.<sup>1</sup>

Of the *third* class are acts prohibited by express order, or in breach of military discipline, such as selling to soldiers citizens' clothing, furnishing them with liquor, introducing liquor or other forbidden articles into the camps, &c., dealing in articles likely to reach and relieve the enemy, violating police, sanitary, or quarantine regulations, &c.<sup>2</sup>

**Offences not cognizable.** The subject of the jurisdiction of military commissions is further illustrated by a reference to the classes of cases of which these tribunals cannot legally take cognizance.

Thus they have no jurisdiction of the purely military offences specified in the Articles of war and made punishable by sentence of court-martial; and in repeated cases where they have assumed such jurisdiction their proceedings have been declared invalid in General Orders.<sup>3</sup>

So, being properly criminal courts, they have no jurisdiction of private controversies between individuals relating to pecuniary obligations, the title to property, &c.<sup>4</sup> Such matters pertain to the province of the local courts, or to tribunals erected in their stead, and expressly invested with a *civil* jurisdiction, by the military commander.<sup>5</sup>

It may be added that the jurisdiction of the military commis-

1. G. O. 7 of 1864; G. C. M. O. 146, 250, of 1864; G. O. 106, Sixteenth Army Corps, 1863; Do. 155, Dept. of No. Ca., 1865.

2. See a case in G. O. 85, Dept. of the Mo., 1865, of a person tried by this court for *voting* without the qualifications required by existing Orders.

3. G. O. 20, 190, 287, of 1847, (Gen. Scott); G. O. 16, Dept. of the Mo., 1861; Do. 1, 18, Id., 1862; Do. 34, 56, Id., 1863; Do. 150, Dept. of the Ohio, 1863; Do. 27, Dept. of the Northwest, 1864; Do. 66, 72, Dept. of Va. & No. Ca., 1865. This rule was not always strictly observed, especially in cases of offences falling within the description of the present 45th and 46th (then 56th and 57th) Articles.

4. *State v. Stillman*, 7 Cold. 341; G. O. 1, Dept. of the Mo., 1862; Do. 197, Id., 1864; DIGEST, 333.

5. Of course a court designated as a "military commission" might legally be so invested by the commander, the mere name being immaterial; but where no such specific authority is expressly given, a military commission so called is, by the invariable usage of the service, a criminal court only.

sion should be restricted to cases of offence consisting in *overt acts*, *i. e.* in unlawful commissions or actual attempts to commit, and not in intentions merely.<sup>1</sup> Thus what would justify in war a precautionary arrest might not always justify a trial as for a specific offence.

**Procedure.** In the absence of any statute or regulation governing the proceedings of military commissions, the same are commonly conducted according to the rules and forms governing courts-martial.<sup>2</sup> These war-courts are indeed more summary in their action than are the courts held under the Articles of war,<sup>3</sup> and, as their powers are not defined by law, their proceedings—as heretofore indicated—will not be rendered *illegal* by the omission of details required upon trials by courts-martial, such, for example, as the administering of a specific oath to the members,<sup>4</sup> or the affording the accused an opportunity of challenge.<sup>5</sup> So, the *record* of a military commission will be legally sufficient though much more succinct than the form adopted by courts-martial, as—for example—where it omits to set forth the testimony, or states it only in substance. But, as a general rule, and as the only quite safe and satisfactory course for the rendering of justice to both parties, a military commission will—like a court-martial—permit and pass upon objections interposed to members, as indicated in the 88th Article of war, will formally arraign the prisoner, allow the attendance of counsel, entertain special pleas if any are offered,<sup>6</sup> receive all the material evidence desired to be introduced,<sup>7</sup> hear argument, find and sentence after adequate delibera-

1. Finlason, Com. on Mar. Law, 130; G. O. 229 of 1863.

2. Finlason, Com. on Mar. Law, 9, 141; 1 Bishop, C. L. § 45, 52; G. O. 1, 7, Dept. of the Mo., 1862; Do. 150, Dept. of the Ohio, 1863; Do. 27, Dept. of the N. West, 1864; DIGEST, 326, 327.

3. Hough, 383; Finlason, Com. on Mar. Law, 127.

4. In some cases indeed proceedings and sentence have been declared inoperative because of this omission. See G. O. 91, 95, 101, 162, of 1863. They were in fact subject to disapproval but not inoperative.

5. See case in G. O. 257 of 1863, where the omission, as indicated by the record, of this and sundry other formalities was deemed sufficient to invalidate the sentence in a capital case. It would more properly have been *disapproved*.

6. Provided they are legally apposite. Thus a plea of the statute of limitations would *not* be, under the terms of Art. 103.

7. Under the general terms of Art. 91, *depositions* may be received by military commissions in the cases there indicated.



tion,<sup>1</sup> render to the convening authority a full authenticated record of its proceedings, and, while in general even less technical than a court-martial, will ordinarily and properly be governed, upon all important questions, by the established rules and principles of law and evidence.<sup>2</sup> Where essential, indeed, to a full investigation or to the doing of justice, these rules and principles will be liberally construed and applied.

**The Charge.** In some cases the Charge has consisted merely of a designation of the offence unaccompanied by any specification: this, however, is a rare form.<sup>3</sup> In general a detailed specification is added precisely as in the court-martial practice. The offence, where a civil crime, is commonly designated in the charge by its legal name, as Murder, Manslaughter, Robbery, Larceny, &c.;<sup>4</sup> where a violation of the laws of war, by simple terms of description—as Being a guerilla, Unauthorized Trading or Intercourse with the enemy, Recruiting for the enemy within the U. S. lines, Violating a parole by a prisoner of war, &c., or simply Violation of the Laws of War, the specification indicating the species of the violation. Where the offence is both a crime against society and a violation of the laws of war, the charge,

1. A military commission may also, in a proper case, punish as for *contempt*. See instances in G. O. 58, Dept. of Va. & No. Ca., 1864; G. C. M. O. 37, Fourth Mil. Dist., 1868. This, not by virtue of any statutory authority but under its general province as a court administering the law of war.

2. See Finlason, Com. on Mar. Law, 142; 3 Greenl. Ev. § 469; G. O. 33, Dept. of the Mo., 1862.

3. See case in G. O. 28, Dept. of the Gulf, 1865.

A peculiar form of charge and procedure, in a case in G. O. 49, Sixteenth Army Corps, 1863, may be noticed here. The prosecution is in the nature of a proceeding *in rem*, the accused being the "Steamboat W. W. Crawford, her officers and cargo," and the specification setting forth a trading from Memphis to places within the enemy's lines, without authority and contrary to military orders. To this charge a person named pleads, in behalf of the steamboat, &c., 'not guilty,' and the commission, after a hearing, finds that the boat, her officers and cargo, are not guilty, and directs that the said parties "be discharged, and released from all liabilities under their bonds."

4. "Treason" has sometimes been employed as a general form of charge, the specification indicating some treasonable act not necessarily constituting technical treason. See G. O. 1, 38, Dept. of the Mo., 1862; Do. 150, Dept. of the Ohio, 1863; Do. 27, Dept. of N. West, 1864.

in its form, has not unfrequently represented both elements, as "Murder, in violation of the laws of war," "Conspiracy, in violation," &c.

The *specification* should properly set forth, not only the details of the act charged, but the circumstances conferring *jurisdiction*—as that a state of war existed, military government was exercised, or martial law prevailed, at the time and place of the offence: the status of the offender should also appear—as that he was an officer or soldier of the enemy's army or otherwise a public enemy, or a prisoner of war, or an inhabitant of a place or district under military government or martial law or person there serving. It is not however essential to aver facts of which the court will take judicial notice.

**The Sentence.** Except in the case of spies,<sup>1</sup> the existing law makes no provision whatever in regard to the quality or quantity of the punishment to be adjudged by the military commission. The power of such a court to award sentence is thus practically without restriction. It is not limited to the penalties known to the practice of courts-martial, nor indeed are the strictly military penalties, such as dismissal, dishonorable discharge, suspension, &c., in general appropriate to it.<sup>2</sup> The punishments more usually employed have been death, imprisonment and fine. Death has commonly been by hanging. Imprisonment, (ordinarily with hard labor,) has been imposed for a term of months or years,<sup>3</sup> (sometimes, and properly, assimilated to the term prescribed for similar

1. Sec. 1343, Rev. Sts.

2. See G. O. 20, Hdqrs. of Army, 1847; Do. 65, Dept. of Va. & No. Ca., 1865; Do. 29, Dept. of the South, 1870. Sentences of discharge or dismissal from office have, however, been adjudged in some cases; as in G. O. 308 of 1864, (a case of a lieutenant in the revenue service;) Do. 19, Dept. of N. Mex., 1862, (a citizen holding an office in the militia;) Do. 13, Dept. of Va. & No. Ca., 1864, (a case of a medical cadet.) In a case in G. O. 8, Dept. of Ala., 1866, an officer of the Treasury Dept. is sentenced to be disqualified to hold office under the United States.

3. In G. O. 39, Northern Dept., 1864, is a case of imprisonment for thirty years at hard labor. In a case of homicide in G. C. M. O. 276 of 1865, the sentence reads—"To be taken *in chains* to the military prison at Camp Chase, near Columbus, Ohio, and be kept at hard labor with ball and chain during the war."

offences by the local law,<sup>1</sup>) for life, or during the war. In cases of men, the place designated for the imprisonment has usually been a penitentiary or a fort;<sup>2</sup> in cases of women, during the late war, the place selected was, in the majority of instances, the "Female Prison," at Fitchburg, Mass.:<sup>3</sup> the labor required of women under sentence of imprisonment was not unfrequently—'working for the benefit of Union-soldiers or prisoners.'<sup>4</sup>

Of the *finés* adjudged by military commissions during the late war, the largest were amounts of \$90,000<sup>5</sup> and \$250,000,<sup>6</sup> imposed respectively upon two agents of the Treasury Department, on conviction of a charge of conspiring to defraud the United States out of the value of captured cotton. In a few cases the fines have been directed in the sentence to be paid to individuals, by way of indemnification for money or property stolen or injuries suffered.<sup>7</sup> In some other cases the accused has been required by the sentence to restore the specific money, or property, stolen;<sup>8</sup> in others the amount of a fine, adjudged in favor of the injured party, is directed by the sentence to remain as a lien upon the

1. See DIGEST, 334.

2. In a few cases the commission imposes a confinement and then *suspends* it to enable the accused to enlist. See G. O. 88, Dept. of the Mo., 1863; Do. 98, Id., 1864.

3. A "female prison" at Salem, Mass., was sometimes designated. G. O. 43, Middle Dept., 1864. In cases tried in New Orleans, hard labor in the "City workhouse," or "House of detention for females," was in some cases resorted to, (G. O. 55, Div. W. Miss., 1864; Do. 68, Dept. of the Gulf, 1865;—in Norfolk, the Norfolk Jail, (Do. 102, Dept. of Va. & No. Ca., 1864; G. C. M. O. 17, Dept. of Va. & No. Ca., 1865.) In the case in the Order last cited, (where the conviction was for "manslaughter,") the reviewing authority, (Gen. Butler,) in designating this jail, adds—"If there is no female department there, she will begin one."

4. G. C. M. O. 206, 240, of 1864. In a case of a woman convicted of mail carrying through the lines and other offences, "proper labor, such as working or sewing for the (other) prisoners" at her place of confinement, was ordered. G. O. 102, Dept. of Va. & No. Ca., 1864.

5. G. O. 55, Dept. of Ala., 1865.

6. Do. 8, Id., 1866. In both cases the commission further sentenced the party to be imprisoned for one year, and thereafter till the fine was paid.

7. G. O. 27 of 1864; G. C. M. O. 59 of 1866; G. O. 80, Dept. of the Mo., 1863.

8. G. O. 7 of 1864; G. C. M. O. 360, Id.

real estate of the offender till paid;<sup>1</sup> in others, again, it is required to be levied on the real and personal property generally, or on certain particular property of the offender;<sup>2</sup> or it is directed that certain of his property be seized and held as security for the payment of the fine and till the same is paid,<sup>3</sup> or that the offender forfeit property to the amount of the fine.<sup>4</sup>

In a few instances the accused, besides being fined, is adjudged to pay the "costs" of the prosecution;<sup>5</sup> in one case, with the fine, there is added a further sum to cover both the costs of the trial and the "damages" sustained by the government.<sup>6</sup>

In this connection may also be noticed sentences imposing *forfeitures of rights*—as the forfeiture of a license to sell liquor,<sup>7</sup> or the forfeiture or prohibition of the exercise of the right to sell fire-arms and ammunition,<sup>8</sup>—penalties generally inflicted in combination with terms of imprisonment.

A further distinct penalty not unfrequently adjudged by military commissions was *confiscation of property*. Thus, upon conviction of illegally selling liquor to soldiers, there was sometimes imposed, (with other punishment—as confinement,) a confiscation to the United States of all the liquor in possession of the accused.<sup>9</sup> A similar penalty was often awarded upon a conviction of attempting to smuggle through the lines, or of unlawfully trading in, medicines or other contraband articles.<sup>10</sup> In this class

1. G. O. 27 of 1864.

2. G. O. 50, Dept. of the Mo., 1863; Do. 25, 49, Id., 1864. And compare the action of the reviewing authority in G. O. 152 of 1865. So, in a case in G. O. 197, Dept. of the Mo., 1864, the amount of the penalty of a forfeited bond, (given for the performance of an oath of allegiance,) is directed to be satisfied from the real and personal estate of the accused and his sureties.

3. G. O. 31, Dept. of N. Mex., 1863.

4. G. O. 19, Dept. of N. Mex., 1862.

5. G. O. 9, 19, Dept. of the Miss., 1862.

6. G. O. 31, Dept. of N. Mex., 1863.

7. G. C. M. O. 666 of 1865. And see Do. 109, Dept. of the Mo., 1864, where this prohibition is added by the reviewing authority, in a case of a second conviction of the offence of selling liquor without a license.

8. G. O. 135, Dept. of the Mo., 1864.

9. G. O. 9, Dist. Kans., 1862; Do. 148, Dept. of the Mo., 1863; Do. 107, Middle Dept., 1865; Do. 54, Dept. of Va., 1865.

10. G. C. M. O. 377 of 1864; G. O. 103, Dept. of the Gulf, 1862; Do.

of cases the team, wagon, or boat by which the supplies were transported, was commonly also confiscated.<sup>1</sup> In some instances the sentence was general, confiscating all the property, or all the real or all the personal property, of the offender.<sup>2</sup> A further peculiar sentence of this class was that adjudged the proprietor of a newspaper by which information and encouragement had been conveyed to the enemy, *viz.*—‘that the press, types, furniture and material of the printing office, be confiscated and sold for the use of the United States.’<sup>3</sup>

Another species of punishment often imposed was *banishment* or *expulsion* beyond the military lines and within the lines of the enemy,<sup>4</sup> or outside of the military department,<sup>5</sup> or from or without the State,<sup>6</sup> or to a particular locality—as to a “free State,”<sup>7</sup> or “north of Philadelphia,”<sup>8</sup> or “north of the Ohio River,”<sup>9</sup> or to a place “not south of New Jersey.”<sup>10</sup> An offender claiming to be a British subject was sentenced to be banished from the United States.<sup>11</sup> Parties were also sentenced to remain during the war

11, 12, 68, *Id.*, 1865; Do. 49, 56, 66, 73, 92, 100, 151, 152, 154, Sixteenth Army Corps, 1863. And see also case in G. O. 72, Dept. of Ark., 1864, where, on conviction of appropriating public animals, the horses and mules taken from the accused were confiscated to the United States.

1. G. C. M. O. 334 of 1864; G. O. 49, Sixteenth Army Corps, 1863.

2. G. C. M. O. 151 of 1865; G. O. 14, 20, Western Dept., 1861; Do. 42, Dept. of the Mo., 1862; Do. 9, Dept. of the Miss., 1862; Do. 19, Dept. of N. Mex., 1862; Do. 29, Dept. of Va., 1863; Do. 179, Sixteenth Army Corps, 1863; Do. 58, Dept. of Va. & No. Ca., 1864.

3. G. O. 11, Dept. of the Miss., 1862.

4. G. O. 25, Army of the Potomac, 1863; Do. 29, *Id.*, (a case of a correspondent of the New York Herald;) Do. 61, Middle Dept., 1863; Do. 63, Sixteenth Army Corps, 1863; Do. 37, 50, 56, 68, 74, Dept. of the Mo., 1863; Do. 132, *Id.*, 1864; Do. 5, Dept. of the East, 1865.

5. G. C. M. O. 54, Dept. of Va., 1865; G. O. 14, 17, Dept. of the Tenn., 1863; Do. 73, Dept. of the Mo., 1864.

6. G. O. 11, Dept. of the Miss., 1862; Do. 148, Dept. of the Mo., 1863. In a case in Do. 72, Dept. of W. Va., 1864, the accused is acquitted but the court *recommend* that he be required to leave the State.

7. G. O. 56, Dept. of Mo., 1864.

8. G. O. 62, Middle Dept., 1864.

9. G. O. 87, Dept. of the Ohio, 1864.

10. G. O. 43, Middle Dept., 1864.

11. G. O. 73, Sixteenth Army Corps, 1863.

within the limits of a certain county.<sup>1</sup> In some cases they were required to remain in the place to which they were condemned to be sent, under penalty of being shot,<sup>2</sup> or imprisoned,<sup>3</sup> if they left it or returned. In others the sentence required that they be paroled to remain within the limits fixed;<sup>4</sup> and in others also to give bond to keep such parole.<sup>5</sup>

A further and frequent sentence was *to furnish a bond* with approved security in a certain penal sum for the future good behaviour or loyal conduct of the offender. This penalty was usually required as a condition to release from military custody, either after a term of imprisonment adjudged by the same sentence, or in connection with fine, or as a sole punishment.<sup>6</sup>

With the requirement of the bond is often combined one to the effect that the accused *take an oath of allegiance* to the United States; the form of the sentence generally being that he be confined, or not released, till he take the oath and give the bond.<sup>7</sup>

Again, where bond and oath are both enjoined, the bond is sometimes required to be given for the faithful performance of the oath.<sup>8</sup>

1. G. O. 49, 143, 148, 149, Dept. of the Mo., 1863; Do. 61, Northern Dept., 1864.

2. G. O. 63, Sixteenth Army Corps, 1863.

3. G. O. 61, Middle Dept., 1863; Do. 56, Dept. of the Mo., 1863; Do. 14, 17, Dept. of the Tenn., 1863; Do. 87, Dept. of the Ohio, 1864.

4. G. O. 37, 49, 143, 148, 149, Dept. of the Mo., 1863; Do. 43, Middle Dept., 1864.

5. G. O. 49, Dept. of the Mo., 1863; Do. 62, Middle Dept., 1864. In a case in Do. 86, Dept. of the Mo., 1864, the sentence is to take an oath of allegiance and give bond for good behaviour, and on failing to do so to be removed from the State.

6. See cases in G. O. 9, Dept. of the Miss., 1862; Do. 38, 50, 74, 80, 117, 119, 143, 148, 149, Dept. of the Mo., 1863; Do. 9, 11, 81, 83, 86, 98, 103, 113, 118, 131, 135, 144, 194, Id., 1864; Do. 49, Sixteenth Army Corps, 1863; Do. 38, Dept. of the Tenn., 1863; Do. 50, Middle Dept., 1863; Do. 39, Dept. of Kans., 1864. Even in acquitting, the Commission has sometimes directed or recommended that the accused, before being released, be required to give such bond.

7. See G. O. 86, Dept. of the Ohio, 1863; Do. 38, Dept. of the Tenn., 1863; Do. 34, 68, Dept. of the Mo., 1863; Do. 6, Id., 1865. In a case in Do. 86, Id., 1864, the requirement is that he take the oath and give the bond, or be removed from the State.

8. See G. O. 23, 38, 40, Dept. of the Mo., 1863. In Do. 37, Id., a

A sentence to take an oath of allegiance merely, *i. e.* without the condition that the accused be not released, or be confined, till he take it, has been disapproved as an inadvisable sentence, because, if he refuses, he cannot be forced to take it, or, if he be forced, the oath will not be obligatory.<sup>1</sup>

**Action by the Reviewing Authority.** The action authorized to be taken by reviewing officers upon the proceedings and sentences of military commissions is distinguished from that which may legally be taken upon the records of courts-martial, in the wider and more varied exercise of authority permitted in the former case. Thus, in disapproving, remitting, &c., findings or sentences of military commissions, the commander has frequently directed the release of the accused upon his entering into a bond with sufficient sureties for his good behaviour or loyal conduct in the future, and in some cases also taking an oath of allegiance; or the accused has been required to take the oath and give bond for its faithful performance.<sup>2</sup> Bonds, oaths, or bond and oath, have even been ordered where the accused has been acquitted.<sup>3</sup>

In passing upon convictions, or even acquittals, it has also sometimes been ordered by the commander, in remitting the sentences or disapproving, (or even approving,) the proceedings that the accused, on being released, be sent 'beyond the lines, south,' or to some particular locality at the north, under penalty—it is occasionally added—of imprisonment, &c., if he returns, or leaves the appointed place, during the war. In some instances, his release

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bond is required for the faithful performance both of the oath and of a *parole*, also required of the accused, to remain at his residence during the continuance of the war. Oath and parole are sometimes required without any bond. Do. 23, Id.

1. G. O. 43, Middle Dept., 1864.

2. G. C. M. O. 156, 203, 251, 254, 256, 270, of 1865; G. O. 19, Dept. of the Miss., 1862; Do. 56, Sixteenth Army Corps, 1863; Do. 7, 15, 38, 50, 56, 60, 74, Dept. of the Mo., 1863; Do. 27, 88, 89, 97, 98, 104, 113, 115, 117, 118, 127, 131, 160, 172, 186, 194, 202, 208, Id., 1864. The amnesty oath, as contained in the President's proclamation of Dec. 8, 1863, is sometimes indicated instead of an oath of allegiance. G. C. M. O. 151 of 1865; G. O. 154, Dept. of the Mo., 1864.

3. See G. O. 57, Dept. of Ark., 1864; also G. O. of Dept. of the Mo., of 1864, cited in last note.

is made *conditional* upon his residing or remaining at the place indicated. In other cases the deportation is ordered in the event of his failing to take an oath or give a bond—either or both—required by the sentence.<sup>1</sup> Again a remission is granted on condition of the payment by the accused of a certain sum;<sup>2</sup> or, (where he may properly be enlisted and desires to enlist,) upon his enlisting as a soldier in our army.<sup>3</sup>

**Action by Judicial Authority.** In conclusion it may be remarked that, as in the case of the judgment of a court-martial,<sup>4</sup> and as held by the Supreme Court in *Ex parte Vallandigham*,<sup>5</sup> the proceedings or sentences of military commissions are not subject *as such* to be appealed from to, or to be directly revised by, any civil tribunal.

## VII. MILITARY AUTHORITY AND JURISDICTION UNDER THE RECONSTRUCTION ACTS OF 1867.

To complete the general subject under consideration, it will be proper to give some account of the *military government* administered during the Reconstruction period of 1867–1870.

**The legal Situation.** The active hostilities incident upon the war of the rebellion having substantially ceased, the Presi-

1. In the case of Vallandigham, (G. O. 68, Dept. of the Ohio, 1863,) the sentence of confinement in a fortress during the war was commuted by his being put beyond our military lines, under penalty of being arrested and confined according to his sentence in case of his return within the lines. In a case in G. O. 4, Dept. of the Mo., 1865, the accused is ordered to be released on taking the oath of allegiance, and on condition that he 'reside in the free States north of the Ohio river, and east of the Illinois Central Railroad, not to return to Missouri during the war under pain of being imprisoned at hard labor.' And see Do. 7, Id., 1863; Do. 11, 14, Id., 1865; Do. 14, Dept. of the Tenn., 1863; Do. 72, Dept. of W. Va., 1864; Do. 102, Dept. of Va. & No. Ca., 1864; Do. 149, Dept. of the Gulf, 1864; Do. 34, Dept. of Washington, 1865.

2. As in the case of Mrs. Sarah Hutchins, (G. O. 115, Middle Dept., 1864.)

3. G. O. 98, 144, Dept. of the Mo., 1864. And see the *sentence* in Do. 88, Id., 1863.

4. The subject of the judicial revision of the proceedings of courts-martial has been fully considered in Vol. I, Chapter V.

5. 1 Wallace, 243.



dent, in the spring and summer of 1865, appointed, (as has heretofore been noticed,<sup>1</sup>) provisional governors for the insurrectionary States, and in 1866 proclaimed the war to be at an end. Congress was at that time in political antagonism to the President, and the question whether the proclamations of 1866 were constitutionally authorized; whether Congress rather than the President was not the power to declare the *status belli* to be terminated—was considerably disputed. The position that the action of the President was not competent to and did not put an end to such status was ably sustained in an opinion of Attorney General Hoar,<sup>2</sup> (hereafter to be referred to as relating to the legality of a certain trial by military commission under the Reconstruction Acts,) in which it was well argued that Congress, being invested by the Constitution with the power to declare war and suppress insurrection, was alone empowered to determine when the rebellion should be considered as finally suppressed, and the pre-existing normal condition restored.<sup>3</sup> This argument applied with special force to an insurrection of such magnitude as to have amounted to a civil war and in which the insurgents had come to be treated as belligerents.

But a further claim, and one subsequently supported by the Supreme Court was, that, under the injunction of the Constitution, (Art. IV, Sec. 4,) that—“*The United States shall guarantee to every State in this Union a republican form of government,*” Congress was both authorized and required to provide, by appropriate legislation, for the restoration of the States to their normal political relations, and by such action to terminate, in law and in fact, the status of insurrection.

The ruling referred to of the Supreme Court was that made in 1868, in the leading case of *Texas v. White*.<sup>4</sup> It was there held that “the power to carry into effect the clause of guaranty is primarily a legislative power and resides in Congress;” that while the President was authorized, *during the continuance of the war*, to institute temporary governments in the insurgent States, such

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1. *Ante*, Title IV—MILITARY GOVERNMENT.

2. XIII Opins., 59.

3. And it was urged that the Act of March 2, 1867, (presently to be cited,) was a legislative declaration by Congress that the war status was *not* terminated. Compare *Perkins v. Rogers*, 35 Ind. 124.

4. 7 Wallace, 701. And see Rawle on the Const., 299; Cooley, Prins., 197; Do., note to 2 Story, 106.

governments could be but provisional only; and that it devolved upon Congress, after having provided for the suppression of active rebellion, to take measures for the substitution of republican governments in harmony with the Union in the place of the revolutionary ones which had been imposed upon the States.

**The Legislation Resorted to.** Proceeding upon such or like views of its constitutional powers,<sup>1</sup> Congress, on March 2, 1867, enacted the first of the Reconstruction Laws, entitled "An Act to provide for the more efficient government of the rebel States," and expressed as follows:—

*"Whereas no legal State governments or adequate protection for life or property now exists in the rebel States of Virginia, North Carolina, South Carolina, Georgia, Mississippi, Alabama, Louisiana, Florida, Texas, and Arkansas; and whereas it is necessary that peace and good order should be enforced in said States until loyal and republican State governments can be legally established: Therefore—*

*"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That said rebel States shall be divided into military districts and made subject to the military authority of the United States as hereinafter prescribed; and for that purpose Virginia shall constitute the first district; North Carolina and South Carolina the second district; Georgia, Alabama and Florida the third district; Mississippi and Arkansas the fourth district; and Louisiana and Texas the fifth district.*

*"SEC. 2. And be it further enacted, That it shall be the duty of the President to assign to the command of each of said districts an officer of the army not below the rank of brigadier general, and to detail a sufficient military force to enable such officer to perform his duties and enforce his authority within the district to which he is assigned.*

*"SEC. 3. And be it further enacted, That it shall be the duty of each officer assigned as aforesaid to protect all persons in their rights of person and property, to suppress insurrection, disorder, and violence, and to punish, or cause to be punished, all disturbers of the public peace and criminals, and to this end he may allow local civil tribunals to take jurisdiction of and to try*

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1. See Debates in 39th and 40th Congresses, Cong. Globe, 1866-1867.

*offenders, or, when in his judgment it may be necessary for the trial of offenders, he shall have power to organize military commissions or tribunals for that purpose, and all interference, under color of State authority, with the exercise of military authority under this act, shall be null and void.*

"SEC. 4. And be it further enacted, *That all persons put under military arrest by virtue of this act shall be tried without unnecessary delay, and no cruel or unusual punishment shall be inflicted; and no sentence of any military commission or tribunal hereby authorized, affecting the life or liberty of any person, shall be executed until it is approved by the officer in command of the district, and the laws and regulations for the government of the army shall not be affected by this act, except in so far as they conflict with its provisions: Provided, That no sentence of death, under the provisions of this act, shall be carried into effect without the approval of the President.*

"SEC. 5. And be it further enacted, *That when the people of any one of said rebel States shall have formed a constitution of government in conformity with the Constitution of the United States in all respects, framed by a convention of delegates elected by the male citizens of said State twenty-one years old and upward, of whatever race, color, or previous condition, who have been resident in said State for one year previous to the day of such election, except such as may be disfranchised for participation in the rebellion, or for felony at common law; and when such constitution shall provide that the elective franchise shall be enjoyed by all such persons as have the qualifications herein stated for electors of delegates; and when such constitution shall be ratified by a majority of the persons voting on the question of ratification who are qualified as electors for delegates; and when such constitution shall have been submitted to Congress for examination and approval, and Congress shall have approved the same; and when said State, by a vote of its legislature elected under said constitution, shall have adopted the amendment to the Constitution of the United States proposed by the Thirty-ninth Congress, and known as article fourteen;<sup>1</sup> and when said article shall have become a*

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1. The *Fifteenth Amendment*, proposed to the legislatures of the several States by Congress in February, 1869, was also required to be ratified by the insurgent States not admitted prior to that date, to wit by Virginia, Georgia, Mississippi and Texas, as a condition to their admission to representation.

*part of the Constitution of the United States, said State shall be declared entitled to representation in Congress, and senators and representatives shall be admitted therefrom on their taking the oath prescribed by law; and then and thereafter the preceding sections of this act shall be inoperative in said State: Provided, That no person excluded from the privilege of holding office by said proposed amendment to the Constitution of the United States shall be eligible to election as a member of the convention to frame a constitution for any of said rebel States, nor shall any such person vote for members of such convention.*

*"SEC. 6. And be it further enacted, That until the people of said rebel States shall be by law admitted to representation in the Congress of the United States, any civil government which may exist therein shall be deemed provisional only, and in all respects subject to the paramount authority of the United States at any time to abolish, modify, control, or supersede the same; and in all elections to any office under such provisional governments all persons shall be entitled to vote, and none others, who are entitled to vote under the fifth section of this act; and no person shall be eligible to any office under any such provisional governments who would be disqualified from holding office under the provisions of the third article of said constitutional amendment."*

A second Act followed, on March 23, 1867, which related merely to the registration of voters, election of delegates to the constitutional conventions, procedure of the conventions, submission of the constitutions to the popular vote, action by Congress upon the result, &c.,—and need not be cited in this connection.

Upon the passage of the first Act, assignments were forthwith made, by the President,<sup>1</sup> of general officers as commanders of the five military districts, and these officers at once entered upon the exercise of their commands.

Some of these commanders having proceeded to exercise powers deemed by the President to be of questionable legality, the Attorney General, (Stanbery,) was called upon for an opinion as to the extent of their authority. In his opinion, (of June 12, 1867,<sup>2</sup>) he held in substance that, hostilities having ceased, an Act conferring military authority over civilians was to be strictly construed; that the authority of the district commanders under

1. By G. O. 10 of March 11, 1867.

2. XII Opins., 182. It need hardly be remarked that the Attorney General was of the same political party as the President, and represented similar views on the general subject of Reconstruction.

the Act was restricted to measures for the suppression of violence and disorder and the protection of life and property, in other words was a police power merely, and did not extend to the exercise of civil government; that the commanders were not empowered to remove or appoint civil officers, abrogate or modify civil laws or ordinances, or interfere with the course of civil justice except in criminal cases; and that in such cases they could properly supersede the civil jurisdiction by the institution of military tribunals only in extreme emergencies. To the jurisdiction of these tribunals limitations were indicated which will be adverted to hereafter.

In view mainly of this opinion,<sup>1</sup> Congress, on July 19th following, proceeded to enact a *third* "supplementary" statute,<sup>2</sup> by which full power and discretion to remove and appoint civil offi-

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1. Chief Justice Chase, in his Address to the Bar at Raleigh, in June, 1867, had meanwhile remarked, in reference to the Reconstruction legislation of March, that, under it, military authority existed 'only to prevent illegal violence to persons and property, and facilitate the restoration of the States.'

2. The only portions of the Act which are material in this connection, (the rest relating to qualifications of voters, boards of registration, &c.,) are Secs. 1, 2, 3, 4, 10, and 11, as follows:—

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, *That it is hereby declared to have been the true intent and meaning of the act of the second day of March, one thousand eight hundred and sixty-seven, entitled 'An act to provide for the more efficient government of the rebel States,' and of the act supplementary thereto, passed on the twenty-third day of March, in the year one thousand eight hundred and sixty-seven, that the governments then existing in the rebel States of Virginia, North Carolina, South Carolina, Georgia, Mississippi, Alabama, Louisiana, Florida, Texas, and Arkansas, were not legal State governments; and that thereafter said governments, if continued, were to be continued subject in all respects to the military commanders of the respective districts, and to the paramount authority of Congress.*

"SEC. 2. And be it further enacted, *That the commander of any district named in said act shall have power, subject to the disapproval of the General of the army of the United States, and to have effect till disapproved, whenever in the opinion of such commander the proper administration of said act shall require it, to suspend or remove from office, or from the performance of official duties and the exercise of official powers, any officer or person holding or exercising, or professing to hold or exercise, any civil or military office or duty in such district under any power, election, appointment, or authority derived from, or granted by, or claimed under, any so-called State or the government thereof, or any municipal or other division thereof; and upon such suspension or removal such commander, subject to the disapproval of the General as aforesaid, shall have power to provide from time to time for the performance of the said duties of such officer or person so suspended or removed, by the detail of some competent officer or soldier of the army, or*

cers in the insurrectionary States within their commands were expressly vested in the district commanders, (and in the General of the Army,) and it was declared that the existing State governments should, during their continuance, remain "*subject in all respects*" to the authority of such commanders and of Congress.

**The Acts as passed upon by the Courts.** The "Reconstruction Laws," thus enacted,<sup>a</sup> continued to be executed to the date—July, 1870—of the admission to representation in Congress

*by the appointment of some other person, to perform the same, and to fill vacancies occasioned by death, resignation, or otherwise.*

"SEC. 3. And be it further enacted, *That the General of the army of the United States shall be invested with all the powers of suspension, removal, appointment, and detail granted in the preceding section to district commanders.*

"SEC. 4. And be it further enacted, *That the acts of the officers of the army already done in removing, in said districts, persons exercising the functions of civil officers, and appointing others in their stead, are hereby confirmed: Provided, That any person heretofore or hereafter appointed by any district commander to exercise the functions of any civil office, may be removed either by the military officer in command of the district, or by the General of the army. And it shall be the duty of such commander to remove from office as aforesaid all persons who are disloyal to the government of the United States, or who use their official influence in any manner to hinder, delay, prevent, or obstruct the due and proper administration of this act and the acts to which it is supplementary.*

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"SEC. 10. And be it further enacted, *That no district commander or member of the board of registration, or any of the officers or appointees acting under them, shall be bound in his action by any opinion of any civil officer of the United States.*

"SEC. 11. And be it further enacted, *That all the provisions of this act and of the acts to which this is supplementary shall be construed liberally, to the end that all the intents thereof may be fully and perfectly carried out.*"

1. Of this body of legislation it is remarked by the Supreme Court of Texas, in *Johnson v. State*, 33 Texas, 570, as follows:—"The national legislature used its legitimate powers with moderation and magnanimity; endeavoring to encourage the formation of republican governments in these States, and bring the people back to a due appreciation of law, and of the liberty which is secured to the free enjoyment of every citizen under the Constitution of the United States."

2. They were all passed over the veto of the President. Vol. 14, Stats. at Large, 429, 430; Do. 15, Id., 4, 5, 16. And see Cooley, note to 2 Story, 649-653.

The later supplementary enactments, of which the principal was that of March 11, 1868, relating to elections, were of inferior importance and need not be quoted.

of the last of the insurrectionary States, being in general sustained as valid legislation by the judiciary. In *Texas v. White*,<sup>1</sup> above cited, it was held, by the Supreme Court, of these laws generally, that they were enacted by Congress in the exercise of a constitutional power; and in *Mississippi v. Johnson*,<sup>2</sup> and *Georgia v. Stanton*,<sup>3</sup> the same court refused to enjoin the President and Secretary of War respectively from carrying such laws into effect, on the ground that the power and duty conferred and imposed thereby were purely executive and political in their nature.

In a few cases a strict construction was given to the powers of the district commanders. Thus in one case in a U. S. District Court, it was held that such a commander was not empowered to place a person in possession of a plantation held under a claim of title by another, in other words that he could not "assume to administer remedial justice between citizens."<sup>4</sup> So, in a case in a State court,<sup>5</sup> it was held that the district commander exceeded his authority in setting aside the decision of a board of arbitrators by which a colored man was believed to have been unjustly deprived of his property. In the majority, however, of the cases of this general class adjudicated in the States affected by the Acts in question, a most liberal view was taken of the authority thereby conveyed. Thus, in a case in Louisiana, the court say of these statutes that they "seem to clothe the commanders of districts with a paramount supervisory power over the civil jurisdiction of these States, and a controlling influence over all the adminis-

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1. 7 Wallace, 730-731.

2. 4 Wallace, 475.

3. 6 Wallace, 50.

4. *Whalen v. Sheridan*, 17 Blatchford, 9. But this ruling, (which is very briefly reported,) was made with reference to the provisions of the Act of March 2, 1867, only; those of the Act of July 19 not being taken into consideration.

5. *Welborn v. Mayrant*, 48 Miss. 652. In the report no reasons are given for this ruling, but the counter opinion of the minority of the court is set forth at length. See *post*. In a further case, *State v. McLane*, 31 Texas, 260, it was held that "a lieutenant of a subdivision of the fifth military district had no right to order a judge to dismiss a prosecution for felony pending in court." This conclusion may have been determined by the fact that the order was given not by the district commander but by a subordinate: it is not however placed in terms on this ground. The case arose *prior* to the enactment of July 19, 1867.

trative functions and powers of State officials." In a case in Texas, the Supreme Court, in recognizing the "binding force" of the Reconstruction Acts, observe: "The orders from time to time issued by the military commander had the force and validity of law." In Arkansas, the court, in sustaining the authority of the district commander to arrest and imprison a citizen, declare that his "imprisonment had the same force and effect as if he had been confined upon a proper warrant from a civil judicial tribunal." In a further case in Texas, it is remarked of the district commanders that "they exercised legislative power, and this power was as full, ample and complete as if exercised by a senate and house of representatives."

**Military Commissions under the Reconstruction Acts—*Their legal authority and province.*** The statutory provisions relating to military commissions, as authorized during the period of reconstruction, were those contained in secs. 3 and 4 of the Act of March 2, 1867, above set forth, empowering the district commanders, when necessary to justice, to order such commissions for the trial of criminals and offenders against public peace and order; and requiring that trials be had without unnecessary delay, that cruel or unusual punishments be not inflicted, and that death sentences be not executed without the approval of the President.

From these provisions the *province* of military commissions at this juncture is seen to have been mainly to serve as *substitutes*

1. *State v. Heath*, 20 La. An. 518. In the minority opinion in *Welborn v. Mayrant*, above noticed, it is forcibly remarked, that under the Reconstruction Acts "the military commander was the source of power, authority and law. \* \* \* He could annul the constitution or code in whole or in part, or he could make law by his military *fiat*, as he did. \* \* \* This military authority reached to every corner and hamlet in the State. \* \* \* There was in fact, in Mississippi, from 1865 to 1870, a pure, undisguised, absolute military government."

2. *Gates v. Johnson Co.*, 36 Texas, 145-6. So, in *Ex parte Warren*, 31 Texas, 143, it was held that, under the Act of July 19, 1867, making the State governments "subject in all respects" to the district commanders, the commander of the 5th district was legally empowered to order that no distinction of color be made by the courts in the admission of witnesses.

3. *Belding v. State*, 25 Ark. 315.

4. *McClelland v. Shelby Co.*, 32 Texas, 20. And see *Johnson v. State*, 33 Id. 570; *Grant v. Chambers*, 34 Id. 573.



*for the local courts,*<sup>1</sup> in cases where, in the opinion of the commander,—for the statute invested him with the sole discretion in the matter,<sup>2</sup>—a resort to the military jurisdiction was essential to the due administration of justice. In a few instances offences were passed upon by military commissions which would regularly have been tried by *U. S. courts* had there been any in operation;<sup>3</sup> but no violations of the laws of war, such as are brought to trial before commissions in time of war, were referred to these tribunals at this period. In the majority of cases indeed crimes and disorders, where without political significance, were allowed to be disposed of by the State judiciary.<sup>4</sup> The trials by military commission under the Reconstruction Laws were in all not much over two hundred in number.<sup>5</sup>

***Their jurisdiction.*** This, while impugned in general terms by the opinion of Atty. Gen. Stanbery above cited,<sup>6</sup> was sustained by the later opinion of Atty. Gen. Hoar in the case of Weaver

1. See DIGEST, 332. In this view it was ordered in the Second District, (G. O. 18 of 1868,) that the military courts convened therein be "governed by the rules of evidence prescribed by the laws of the State in which the case is tried."

2. In the case of Weaver, the district commander was moved to the exercise of such discretion by a State judge, by whom he was requested to have the accused tried by a military court on the ground that justice could not "probably" be administered by the courts of the State. XIII Opins. At. Gen., 60-1.

3. But offences against the laws of the U. S. were not triable by military commission in districts in which the U. S. courts were exercising their usual functions. DIGEST, 332; G. O. 164, Second Mil. Dist., 1867; Do. 12, Fourth Id., 1867. And see address of Chase C. J. to the bar of Raleigh, June 6, 1867.

4. Thus it was announced in the First District, (G. O. 24 of 1868,) that it was the purpose of the Commanding General—"not to interfere with the operation of the State laws as administered by the civil tribunals, except where the remedies thereby afforded are inadequate to secure to individuals substantial justice." So, in G. O. 10, Third Mil. Dist., 1868. it is said—"The Commanding General desires it to be understood that the trial and punishment of criminals is to be left to the civil authorities, so long as the said authorities are energetic, active, and do justice to the rights of person and property without distinction of race or color." And see Do. 1, 40, Fifth Id., 1867.

5. At some of these trials, however, a considerable number of accused were joined in the same charge and proceedings. Thus 23 were joined in the case published in G. O. 175, Fifth Mil. Dist., 1869.

6. XII Opins., 198, 199.

sentenced to death for murder,<sup>1</sup> as well as, in effect, by the rulings of the courts above cited which upheld the authority exercised by the district commanders as a form of legitimate *military government*. In the first indeed of the opinions indicated the extent of such jurisdiction was properly held to be limited to offences committed *after* the passage of the original Act;<sup>2</sup> and in a case in the Second District, of a citizen brought to trial and sentenced by a military commission convened under such Act, for a crime committed *in 1864*, the proceedings were disapproved as illegal, and the prisoner was committed to the civil authorities.<sup>3</sup> On the other hand, as it was also properly held, such a commission could not be resorted to for the trial of offences *after* the State in which the same were committed had been admitted to representation in Congress.<sup>4</sup> The time and scope of the jurisdiction were thus contemporaneous with the period of the operation of the Reconstruction Acts.

As to *persons*, the jurisdiction of the commission, while mainly exercised over civilians,<sup>5</sup> was sometimes extended to cases of soldiers where their offences were such as would have been triable by the State (or U. S.) courts if in operation.

As to *offences*, those taken cognizance of by military commissions at this period were:—*first* and principally, crimes and disorders made punishable by the local or common law, such as

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1. XIII Opins., 59. In this case, the opinion—that the commission was a legally authorized tribunal and its sentence a valid judgment—was adopted by the President, and the sentence was approved. See G. C. M. O. 41 of 1869.

2. XII Opins., 200.

3. G. O. 125, Second Mil. Dist., 1867.

4. DIGEST, 333. And see case, in G. O. 12, Dept. of the South, 1868, of the alleged murderers of Geo. W. Ashburn. In the First Mil. Dist., upon the passage of the Act admitting Virginia to representation, it was ordered, (by G. O. 9 of January 27, 1870,) as follows: "All citizens who may be held by military authority for trial, either in custody or upon bail, for acts in violation of the above cited laws," (*i. e.* Reconstruction Acts,) "will be released from custody or discharged of their bail bonds and the military prosecution dismissed. All citizens, held by military authority for trial for crimes or offences cognizable under the laws of the provisional government of the State of Virginia, will be turned over to the custody of the proper civil authorities of the county or corporation in which the crime or offence was committed."

5. Trials of *women* were very few compared to the number of those tried during active hostilities. See cases in G. O. 130, Second Mil. Dist., 1868; G. C. M. O. 8, Fourth Id., 1868.

murder,<sup>1</sup> manslaughter, robbery, larceny, riot,<sup>2</sup> "lynching,"<sup>3</sup> criminal conspiracy,<sup>4</sup> assault with intent to kill,<sup>5</sup> assault and battery,<sup>6</sup> burglary,<sup>7</sup> obtaining money under false representations,<sup>8</sup> false imprisonment, malicious mischief,<sup>9</sup> breach of the peace and disorderly conduct,<sup>10</sup> embezzlement,<sup>11</sup> and malfeasance in office;<sup>12</sup> *second*, acts made punishable by U. S. statute, as purchasing arms, clothing, &c., from soldiers,<sup>13</sup> forgery of checks on the Treasury,<sup>14</sup> stealing public property,<sup>15</sup> &c.; *third*, breaches of military orders regulating the selling of liquor to soldiers, forbidding the carrying of concealed weapons,<sup>16</sup> securing rights to colored persons,<sup>17</sup> &c.

1. See cases in G. C. M. O. 41 of 1869, (James Weaver;) G. O. 118, Second Mil. Dist., 1867, (Wm. J. Tolar and others;) Do. 58, 140, Id., 1868; Do. 96, Third Id., 1868; G. C. M. O. 20, 31, Fourth Id., 1867; Do. 1, 23, Id., 1868; Do. 46, 59, Id., 1869; G. O. 25, 38, Fifth Id., 1868; Do. 107, 153, 175, 211, Id., 1869; Do. 14, 27, (Chas. Green and others,) 33, 41, 53, 62, Id., 1870.

2. G. O. 134, Second Mil. Dist., 1868; Do. 72, Third Id., 1868; G. C. M. O. 24, Fourth Id., 1867.

3. G. O. 72, Third Mil. Dist., 1868, (Wm. Pettigrew and twelve others.)

4. G. C. M. O. 34, Fourth Mil. Dist., 1868; G. O. 175, Fifth Id., 1869, (an alleged conspiracy of 23 persons to oppose the execution of the Reconstruction laws, resist the military authority, &c.)

5. G. C. M. O. 6, 13, 17, Fourth Mil. Dist., 1867; Do. 14, 37, Id., 1868; G. O. 17, Fifth Id., 1868; Do. 181, Id., 1869; Do. 26, Id., 1870.

6. G. O. 41, 69, 75, Second Mil. Dist., 1867; G. C. M. O. 27, Fourth Id., 1867; G. O. 205, Fifth Id., 1869; Do. 3, Id., 1870.

7. G. C. M. O. 6, Fourth Mil. Dist., 1867.

8. G. O. 8, First Mil. Dist., 1868; Do. 7, Id., 1870; Do. 41, Second Id., 1867; G. C. M. O. 14, Fourth Id., 1868.

9. G. O. 68, Second Mil. Dist., 1868.

10. G. O. 161, Second Mil. Dist., 1867, (obstructing a railroad;) G. C. M. O. 10, Fourth Id., 1867, (interference with registration;) Do. 26, Id., 1867, ("insulting the U. S. flag;") G. O. 234, Fifth Id., 1869, (breaking into a jail and releasing a prisoner.)

11. G. O. 3, 15, First Mil. Dist., 1870, (by a sheriff, of money collected for taxes, &c.)

12. G. O. 96, Third Mil. Dist., 1868, (by a deputy sheriff;) Do. 50, Id., 1868, (by an agent of the Freedmen's Bureau;) G. C. M. O. 5, Fourth Id., 1868, (ditto.)

13. G. O. 94, Third Mil. Dist., 1867; G. C. M. O. 6, Fourth Id., 1867; G. O. 212, Fifth Id., 1869.

14. G. C. M. O. 14, Fourth Mil. Dist., 1868.

15. G. O. 90, First Mil. Dist., 1868.

16. G. O. 102, 122, Second Mil. Dist., 1867; Do. 27, Id., 1868; Do. 95, Third Id., 1867.

17. G. O. 74, Second Mil. Dist., 1867, (violation of an order of the

**Sentence.** The punishments imposed by the sentences of these commissions were in general of the same nature as those assigned by the laws of the State, (or United States,) in similar cases, *viz.* death, imprisonment for life or for a term of years or months, and fine. The imprisonment was executed in a penitentiary, a county jail, or at a military post such as the Dry Tortugas, Ship Island, or Fort Macon. In one case<sup>1</sup>—of assault and battery on a colored girl—a fine imposed by the sentence was directed by the same to be paid to the injured party. In another case a justice of the peace was sentenced to be *removed from office* for taking part in the whipping of a colored person.<sup>2</sup> In cases of *soldiers*, convicted of criminal offences, punishments of a strictly military character, such as dishonorable discharge and forfeiture of pay, were in general disapproved.<sup>3</sup>

**Other Tribunals.** The first of the reconstruction laws authorized district commanders in proper cases "to organize military commissions *or tribunals*, and the commissions above described were not in fact the only courts instituted under the laws; others also being employed for the disposition of petty offences and the regulation of the internal economy of the commands.

Thus, the District Commanders, especially in the Second and Fifth Districts, resorted also to courts designated as "*Post Courts*," ordered by the post commanders, or consisting of the post commanders themselves as police magistrates.<sup>4</sup>

In the First, Second and Fifth Districts, the district commanders, either directly or through the post commanders, appointed officers of their commands as *Military Commissioners*, who were clothed, severally, with the powers of justices of the peace and police judges, and directed to act where the similar civil

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dist. commander, in refusing to give a first class ticket on a coast steamer to a colored woman;) Do. 94, Third Id., 1867, (do. in subjecting a colored man to a punishment—lashes—different from that prescribed for whites.)

1. G. O. 41, Second Mil. Dist., 1867.

2. G. O. 75, Second Mil. Dist., 1867. But in a case in Do. 50, Third Id., 1868, a punishment of *dismissal*, imposed, (with fine and imprisonment,) upon an agent of the Freedmen's Bureau, was disapproved as of questionable authority.

3. G. C. M. O. 5, Fourth Mil. Dist., 1868; G. O. 153, Fifth Id., 1869.

4. G. O. 25, Second Mil. Dist., 1867; Do. 4, Fifth Id., 1869.

functionaries failed or were unable to administer due justice.<sup>1</sup> Other special powers and duties were also devolved upon these officials; such, for example, as taking charge of indigent persons,<sup>2</sup> taking measures to prevent combinations against the reconstruction laws,<sup>3</sup> bringing to trial and punishment persons charged with denying rights to colored people,<sup>4</sup> persons refusing to work on the roads, bridges,<sup>5</sup> &c., persons accused of intimidating voters,<sup>6</sup> offenders against the regulations for the registration of voters,<sup>7</sup> &c.; with other duties pertaining to elections and the appointment and qualifying of civil officers;<sup>8</sup> as also authority to suspend sales under mortgage and stay executions,<sup>9</sup> to adjudge *qui tam* penalties,<sup>10</sup> to tax costs and legal fees as in civil cases and to admit to bail.<sup>11</sup>

Special courts, (of three members,) designated as *Military Tribunals*, were also constituted at posts in the Second District with authority to pass upon offences growing out of the illegal sale, manufacture, &c., of spirituous liquors, and the offence of carrying concealed weapons.<sup>12</sup> In some of the Districts the old *Provost Court* was continued with a limited jurisdiction similar to that of the Post Courts above mentioned.<sup>13</sup> In the Fourth

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1. G. O. 31, First Mil. Dist., 1867; Do. 65, Id., 1869; Do. 61, Second Id., 1868; Do. 4, Fifth Id., 1869. See instructions for their government in Do. 43, First Id., 1869.

2. G. O. 51, First Mil. Dist., 1867.

3. G. O. 61, Second Mil. Dist., 1868.

4. G. O. 74, 75, Second Mil. Dist., 1867.

5. G. O. 95, Second Mil. Dist., 1867.

6. G. O. 68, First Mil. Dist., 1867; Do. 61, Id., 1869; Do. 65, Second Id., 1867.

7. G. O. 65, Second Mil. Dist., 1867.

8. Circ. 13, First Mil. Dist., 1867; Do., Aug. 12, Id., 1869; G. O. 33, Id., 1868; Do. 70, Id., 1869.

9. G. O. 20, 149, First Mil. Dist., 1868.

10. G. O. 17, Fifth Mil. Dist., 1869.

11. Circ. 7, First Mil. Dist., 1867; G. O. 105, Second Id., 1867; Do. 4, 7, 17, Fifth Id., 1869. In the G. O. referred to of the Second Dist., the amount of the bail bond is made a lien on the personal property of the principal and his sureties.

12. Circ., May 15 and July 17, Second Mil. Dist., 1867; G. O. 25, 32, Id., 1867; Do. 29, Id., 1868.

13. A special jurisdiction for the settlement of disputes between employers and employees as to their rights under military orders, is devolved upon this court in G. O. 18, Second Mil. Dist., 1868.

District a *Board of Arbitration* was established for the equitable adjustment of the claims of laborers upon the crops of 1867.<sup>1</sup>

**Exercise of Civil Authority under the Reconstruction Acts.** The Act of March 2, 1867, as has been seen, authorized the district commanders "to protect all persons in their rights of person and property," and, in declaring that the existing governments of the insurgent States were not legal, added that "all interference under color of State authority with the exercise of military authority under this Act shall be null and void." The Supplemental Act of July 19, 1867, specifically empowered the district commanders to suspend or remove any civil officials and appoint other persons in their stead, (making it a special duty to remove those obstructing the execution of these Acts,) and confirmed removals and appointments made before its date. It also, as has been remarked, declared that the provisional State governments were, while they subsisted, "to be continued subject in all respects to the military commanders of the respective districts and to the paramount authority of Congress." It further provided that "all the provisions" of the several Reconstruction Acts "shall be construed liberally to the end that all the intents thereof may be fully and perfectly carried out."

Under the broad authority thus expressly and by implication conveyed, (the scope of which was recognized in the rulings of the courts heretofore cited,) many radical acts of *civil government*, both executive and legislative in their nature, were initiated by the military orders of the district commanders. Among these may be noted the following:—

**The removal and appointment of civil officers.** This power was exercised in sundry cases of important officials; as, for example, those of Governor,<sup>2</sup> Secretary of State,<sup>3</sup> and Auditor,<sup>4</sup> of Virginia; of Governor, Treasurer, Secretary of State and Comptroller of Georgia;<sup>5</sup> of Governor and Attorney General of

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1. Circ. 22, 24, Fourth Mil. Dist., 1867.

2. G. O. 36, First Mil. Dist., 1868.

3. S. O. 68, First Mil. Dist., 1869. A military officer, Capt. G. Malery, was appointed.

4. S. O. 67, First Mil. Dist., 1869. Major T. H. Stanton was appointed.

5. G. O. 8, 12, 17, Third Mil. Dist., 1868. The civil incumbents

Mississippi;<sup>1</sup> of Governor, Lieutenant Governor, Secretary of State<sup>2</sup> and Attorney General<sup>3</sup> of Louisiana; and of Governor<sup>4</sup> and Speaker of the House of Representatives<sup>5</sup> of Texas. It was further exercised in the cases of several State and many county and city judges,<sup>6</sup> and in manifold instances of mayors, aldermen, sheriffs, county clerks, justices of the peace, coroners, constables, school commissioners, and other minor municipal officers.<sup>7</sup>

***Supervision of the police and maintenance of law and order.*** The police and constabulary of cities, towns and counties were placed under the immediate direction of the post commanders or military commissioners,<sup>8</sup> and in the Second District were also required to report to and obey the orders of the Provost Marshal General of the District.<sup>9</sup> Post commanders (and commissioners) were authorized to summon civil officials and citizens generally to aid them in the execution of their orders, and a neglect or refusal to render the required assistance was made a misdemeanor punishable by fine and imprisonment to be adjudged

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were removed for 'declining to respect the instructions of the Dist. Commander, and failing to acknowledge his authority or coöperate with him.' Gen. T. H. Ruger was appointed Governor, Capt. C. F. Rockwell Treasurer, and Capt. C. Wheaton Secretary and Comptroller.

1. G. O. 23, Fourth Mil. Dist., 1868. Gen. A. Ames and Capt. J. Myers were appointed in the stead of the civil incumbents removed.

2. S. O. 62, 192, Fifth Mil. Dist., 1867; Do. 143, Id., 1868. The appointees were civilians.

3. G. O. 5, Fifth Mil. Dist., 1867.

4. S. O. 105, Fifth Mil. Dist., 1867.

5. G. O. 21, 23, Fifth Mil. Dist., 1870.

6. See the following Special Orders removing, suspending and appointing judicial officers:—S. O. 124, First Mil. Dist., 1867; Do. 102, 117, (appointing Major H. B. Burnham Judge of the Supreme Court of Virginia,) Id., 1869; Do. 168, 183, 241, Second Mil. Dist., 1867; Do. 20, 69, Id., 1869; Do. 9, 125, 126, 164, 190, 238, Third Mil. Dist., 1867; Do. 13, 14, 41, 42, 59, 75, 83, 110, 112, Id., 1868; Do. 125, 126, 216, Fourth Mil. Dist., 1867; Do. 38, 39, 229, Id., 1868; Do. 111, 184, 191, 201, 204, 207, Fifth Mil. Dist., 1867; Do. 14, 16, 18, 44, 48, 62, 89, 95, 103, 120, 131, 148, 156, Id., 1868.

7. See the Special Orders of the several Military Districts, *passim*.

The term of office of these appointees was limited by the period of the military government under the Reconstruction Acts. *Stone v. Wetmore*, 44 Ga. 495.

8. G. O. 65, First Mil. Dist., 1869; Do. 12, Second Id., 1867; Do. 4, 5, Fifth Id., 1869.

9. G. O. 34, Second Mil. Dist., 1867.

by a military court.<sup>1</sup> Assemblages of armed organizations were forbidden,<sup>2</sup> masked and disguised persons were directed to be arrested,<sup>3</sup> and the carrying of deadly weapons was prohibited.<sup>4</sup> On special occasions such as that of a riot at Mobile in 1867, and of the assassination, at Columbus, Georgia, in 1868, of a member of the Constitutional Convention, orders were issued for the more effectual suppression of disorder and violence, newspapers and public speakers were enjoined not to indulge in inflammatory language, the writing of threatening letters was denounced, &c.<sup>5</sup> In such and other<sup>6</sup> cases the civil authorities were required to co-operate with the military in the keeping of the peace and the arrest of offenders. On the other hand the military were ordered to assist the civil authorities where necessary—as in the suppression of vagrancy,<sup>7</sup> and in the collection of taxes when resisted by violence.<sup>8</sup> Such precautions were further taken as to provide that a sheriff's *posse* should not be limited to persons of his own political party,<sup>9</sup> and that, where freed persons were to be arrested, the *posse* should in general be composed of persons of the same race or color.<sup>10</sup>

***Provision for the poor and the colored people, and regulation of labor.*** The proceeds of licenses, forfeitures and fines were devoted to the poor; or the local authorities were required to provide for them through the proper taxes, &c., the coöperation of the military being directed:<sup>11</sup> special provision was also made for the support and comfort of the indigent and insane at asylums and penitentiaries.<sup>12</sup> No discrimination was allowed to

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1. G. O. 32, Second Mil. Dist., 1867.

2. G. O. 58, Third Mil. Dist., 1868; Do. 28, Fourth Id., 1867.

3. G. O. 15, Fifth Mil. Dist., 1868.

4. G. O. 10, Second Mil. Dist., 1867; Do. 58, Third Id., 1868; Do. 38, Fourth Id., 1867.

5. G. O. 25, Third Mil. Dist., 1867; Do. 51, Id., 1868.

6. See also G. O. 42, Third Mil. Dist., 1868; Circ., Fourth Id., July 29, 1867.

7. G. O. 23, Fourth Mil. Dist., 1867.

8. G. O. 77, Third Mil. Dist., 1867.

9. G. O. 7, Fifth Mil. Dist., 1869.

10. G. O. 23, Fourth Mil. Dist., 1867.

11. G. O. 51, First Mil. Dist., 1867; Do. 164, Second Id., 1867; Circ., Id., June 17, 1867; G. O. 53, 80, Id., 1868.

12. See G. O. 136, First Mil. Dist., 1869.



be made against colored paupers,<sup>1</sup> nor against colored persons as to admission into public institutions,<sup>2</sup> subsistence in prisons,<sup>3</sup> rights in public conveyances,<sup>4</sup> the selection of jurors,<sup>5</sup> the payment of poll tax or penalties,<sup>6</sup> or generally as to the administration of justice or the enjoyment of the benefits intended to be secured by the Act of Congress, for the protection of persons in their civil rights, of April 9, 1866.<sup>7</sup> The freedmen were duly instructed as to the procedure of registration and voting,<sup>8</sup> and protected from intimidation and interference on the part of their employers and others.<sup>9</sup> The same validity and effect were required to be given to parol contracts between white and colored as to contracts between whites,<sup>10</sup> and provision was made that colored laborers should not be defrauded out of the just wages of their labor.<sup>11</sup> In the Second District post commanders were authorized to enforce the performance of labor by the citizens on the roads and bridges,<sup>12</sup> or to require them when expedient to serve as roadmasters and overseers.<sup>13</sup> In the Third District work on the highways was authorized to be exacted as a punishment for minor offences.<sup>14</sup>

*Imposition, &c., of taxes and granting of licenses.* In several instances the District Commanders exercised the power of levying taxes,<sup>15</sup> and in others they remitted or suspended the

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1. G. O. 31, Third Mil. Dist., 1868; Do. 25, Fourth Id., 1867.
  2. G. O. 31, Third Mil. Dist., 1868.
  3. G. O. 44, Third Mil. Dist., 1868.
  4. G. O. 32, Second Mil. Dist., 1867.
  5. G. O. 53, 55, Third Mil. Dist., 1867; Do. 32, Fourth Id., 1869.
  6. G. O. 15, 25, Fourth Mil. Dist., 1867.
  7. G. O. 4, Third Mil. Dist., 1867.
  8. G. O. 5, 61, Fourth Mil. Dist., 1867; Do. 61, Second Id., 1868.
  9. G. O. 61, Second Mil. Dist., 1868; Do. 57, 58, Third Id., 1868; Do. 16, 55, Fourth Id., 1867.
  10. G. O. 134, Second Mil. Dist., 1867.
  11. G. O. 19, Fourth Mil. Dist., 1867.
  12. G. O. 95, Second Mil. Dist., 1867.
  13. G. O. 117, Second Mil. Dist., 1867.
  14. G. O. 69, Third Mil. Dist., 1868.
  15. As, in G. O. 139, Second Mil. Dist., 1867, a tax for the support of the provisional government of South Carolina; and, in Do. 41, Fifth Id., 69, a special county tax as a provision for the more efficient administration of justice.

collection of taxes deemed unauthorized or oppressive,<sup>1</sup> or reduced taxes as too heavy, extended the time for their payment, or granted exemptions from the same.<sup>2</sup> The granting of licenses for the sale of liquor, &c., and the application of the moneys received therefor, were also subjects regulated by military order.<sup>3</sup>

***Prohibitions and directions as to judicial and legal proceedings.*** The civil courts were, in repeated cases, prohibited from entertaining suits or prosecutions against military persons on account of acts done under military orders,<sup>4</sup> (as also against citizens who could not have a fair trial because of their adherence to the Union during the war;<sup>5</sup>) and from discharging, on *habeas corpus*, persons who were held in military custody for the reason that they could not be fairly tried by the civil tribunals.<sup>6</sup> Sales of land, crops, or other property, upon execution or foreclosure of mortgage, or under deeds of trust, as also suits on judgments, were suspended where unreasonable sacrifice and oppression would result.<sup>7</sup> In some instances rules as to jurisdiction and procedure were prescribed to the courts,<sup>8</sup> and directions were issued as to the qualifying of their clerks,<sup>9</sup> the qualifications and drawing of jurors,<sup>10</sup> &c.<sup>11</sup>

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1. G. O. 92, Second Mil. Dist., 1867; Do. 232, 235, Fifth Id., 1869.

2. G. O. 81, 102, Second Mil. Dist., 1868; Circ., Id., Oct. 9, 1867; G. O. 28, Fourth Id., 1869. See also many cases of staying, &c., the collection of taxes, in the *Special Orders* of the different Districts.

3. G. O. 59, First Mil. Dist., 1869; Do. 32, 164, Second Id., 1867; Circ., Id., June 17, 1867; G. O. 39, Fourth Id., 1867.

4. G. O. 134, Second Mil. Dist., 1867; Do. 45, Third Id., 1867; Do. 7, Id., 1868.

5. G. O. 134, Second Mil. Dist., 1867; Do. 25, Fourth Id., 1867.

6. G. O. 10, Third Mil. Dist., 1868.

7. G. O. 10, 164, Second Mil. Dist., 1867; Do. 14, 63, Id., 1868; Do. 95, Third Id., 1868; Do. 12, 25, Fourth Id., 1867. The *Special Orders* of the Districts contain also constant and numerous directions as to the staying, suspending, dismissing, disapproving, annulling and confirming of proceedings, judgments, &c., in the civil courts.

8. G. O. 46, 97, First Mil. Dist., 1869; Do. 11, 81, Second Id., 1868; Do. 22, Fifth Id., 1870.

9. G. O. 46, First Mil. Dist., 1869.

10. G. O. 89, 100, Second Mil. Dist., 1867; Do. 11, Id., 1868; Do. 53, Third Id., 1867.

11. A further Order, of the First Dist., (G. O. 71 of 1867,) directed the Supreme Court of Virginia to hold a special session on a day named. In G. O. 53, Second Mil. Dist., 1868, the civil courts of North and South

**Exercise of legislative power.—Making, unmaking and modifying statute law.** The legislative power pertaining to the military government<sup>1</sup> was manifested by such acts of the district commanders as—enacting a formal statute “to punish obstruction of railroads,” which, among other things, prescribed the death penalty for one of the forms of offence enumerated;<sup>2</sup> ‘annulling’ or ‘rescinding’ a provision of a State law imposing a poll tax, and substituting another;<sup>3</sup> extending an appropriation Act so as to make it apply to a further fiscal year;<sup>4</sup> construing so as to extend, modifying, or suspending, statutes relating to tenancies, stay of executions, recovery of debts, taxation, education, apprentices, granting of licenses, pilotage, shipping of hides, amnesty for offences,<sup>5</sup> &c. In an Order of the First District,<sup>6</sup> all civil officers, corporations, &c., in Virginia, required by law to make report to the legislature at its annual session, are required to make the same to the district commander.

In an Order of the Second District,<sup>7</sup>—the most remarkable instance in our history of the exercise of legislative authority by a military commander,—“imprisonment for debt is prohibited” except in cases of fraud; certain money judgments are forbidden to be “enforced by execution against the property or the person of the defendant;”<sup>8</sup> the sale of property on execution or foreclosure is suspended for one year; “all proceedings for the recovery of money under contracts, whether under seal or by parol, the consideration for which was the purchase of negroes, are suspended;” wages for labor performed in the production of

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Carolina were invested with jurisdiction of cases of selling liquor in violation not only of local police regulations but of *military orders*.

1. As to the extent of this power, see citation from *McClelland v. Shelby Co.*, 32 Texas, 20, *ante*.

2. G. O. 120, Second Mil. Dist., 1867.

3. G. O. 164, Second Mil. Dist., 1867; Do. 28, Fourth Id., 1869.

4. G. O. 6, First Mil. Dist., 1870.

5. G. O. 149, First Mil. Dist., 1868; Do. 59, 80, Id., 1869; Do. 134, 164, Second Id., 1867; Do. 11, Id., 1868; Do. 17, 68, 139, Fifth Id., 1869.

6. G. O. 7 of 1869.

7. G. O. 10 of 1867.

8. These are judgments on causes of action arising between Dec. 19, 1860, and May 15, 1865. It is added:—“Proceedings in such causes of action, now pending, shall be stayed; and no suit or process shall be hereafter instituted or commenced, for any such causes of action.”

a crop is made a *lien* on the crop; a "homestead exemption" is created; bail is ~~done~~ away with in actions *ex contractu*; "the punishment of crimes and offences by whipping, maiming, branding, stocks, pillory, or other corporal punishment,"<sup>1</sup> is discontinued; the punishment of death in cases of burglary and larceny, as authorized by State laws, is abolished, and graded penalties of fine and imprisonment are prescribed for such offences; the power of reprieve, pardon and remission is given to the Governors of North and South Carolina; and imprisonment for overdue taxes is inhibited. The Order concludes as follows:—"Any law or ordinance, heretofore in force in North or South Carolina, inconsistent with the provisions of this General Order, is hereby suspended and declared inoperative."<sup>2</sup> In an Order of the next month,<sup>3</sup> made by the same commander, "the remedy by distress for rent is abolished."

As another instance of legislative action may be noted the fact that, in approving and ordering into effect, as they repeatedly did, the ordinances of the constitutional conventions, the district commanders in some cases *excepted* certain provisions, and in others substituted or added provisions of their own.<sup>4</sup>

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1. See the prior act of Congress, of March 2, 1867, c. 170, s. 5 in which it is made the duty of officers of the army, &c., "to prohibit and prevent whipping or maiming of the person, as a punishment for any crime, misdemeanor, or offence," in "any State lately in rebellion," and not yet readmitted to representation in Congress.

It was held in *State v. Kent*, 65 No. Ca. 311, that this Order could have no further effect than to *suspend* the existing law as to corporal punishment; the law reviving as soon as, with the discontinuance of the military government, the Order ceased to have effect.

2. It was mainly with reference to this Order that Atty. Gen. Stanbery, in his opinion heretofore cited, said—"He," (the Dist. Commander,) "assumes, directly or indirectly, all the authority of the State, legislative, executive and judicial, and in effect declares—'I am the State.'"<sup>1</sup> The Order was in fact an anticipation of the enactment of the following July, which completed the powers of the military government, and, in doing so, added the injunction that "no district commander shall be bound in his action by any opinion of any civil officer of the United States."

G. O. 10 was materially modified as to some of its provisions by G. O. 164 of the same year, issued by a subsequent commander of the district.

3. G. O. 32 of 1867.

4. G. O. 57, Second Mil. Dist., 1868; Do. 18, 24, 29, Third Id., 1868; Do. 10, Fourth Id., 1868.

***Appropriations from the State treasuries.*** In lieu of legislatures, the district commanders not unfrequently exercised the power of appropriating moneys for the support of the civil governments of the States within their commands,<sup>1</sup> as also for the repairs and maintenance of asylums, penitentiaries, and other public institutions.<sup>2</sup>

***Quarantine and sanitary regulations.*** Careful and detailed quarantine regulations were issued by the different commanders,<sup>3</sup> and, in the Fourth District, sanitary regulations for the season of epidemics of 1867.<sup>4</sup>

***Miscellaneous matters.*** To the acts and orders of the district commanders above enumerated may be added the following:—The prohibition of “the distillation or manufacture of whiskey or other spirits from grain;”<sup>5</sup> The invalidating of contracts for the manufacture, sale, &c., of intoxicating liquor;<sup>6</sup> The suspension of elections of officers of railroad companies in which any of the States constituting the district possessed an interest;<sup>7</sup> the making special provision for the arrest and trial of persons guilty of horse-stealing;<sup>8</sup> The making provision for the enrolment of the inhabitants of the State, (Texas,) as a force for defence against hostile Indians.<sup>9</sup>

***Duties as to Elections, Registration, &c.*** The remaining orders of the district commanders were chiefly those issued in the performance of the duties devolved upon them by the Acts

1. See, for example, G. O. 118, 122, First Mil. Dist., 1869; Do. 6, Id., 1870; Do. 139, Second Id., 1867; Do. 18, Fifth Id., 1869; Do. 6, Id., 1870.

2. G. O. 58, 122, 136, First Mil. Dist., 1869. Other appropriations for such institutions, as also for the expenses of State Conventions, are contained in the *Special Orders*.

3. G. O. 42, First Mil. Dist., 1867; Do. 39, Id., 1868; Do. 75, Id., 1869; Do. 3, Second Id., 1867; Do. 64, Id., 1868; Do. 5, Fourth Id., 1867; Do. 23, 34, Fifth Id., 1868; Do. 104, Id., 1869.

4. G. O. 8, Fourth Mil. Dist., 1867.

5. G. O. 25, Second Mil. Dist., 1867. [Revoked by a subsequent district commander in Do. 164, Id.] See also Do. 12, Fourth Id., 1867.

6. G. O. 32, Second Mil. Dist., 1867. [Revoked in Do. 164, Id.]

7. G. O. 84, Second Mil. Dist., 1868.

8. G. O. 9, Fourth Mil. Dist., 1867; Do. 3, Id., 1868.

9. G. O. 75, Fifth Mil. Dist., 1869.

of March 23 and July 19, 1867, March 11, 1868, and April 10, 1869, with reference to the elections and proceedings thereby prescribed. These orders constituted and appointed boards of registration and superintendents or commissioners of election, and instructed them as to their duties; provided for due registrations of the qualified voters and revisions of the registry lists; directed elections of delegates to the constitutional conventions, and notified those elected to assemble and act; submitted the constitutions when framed to the popular vote, and at the same time ordered the elections for State officers and members of Congress; regulated by precise and detailed directions the conduct of such elections, so as to secure a full expression and ensure a fair ballot;<sup>1</sup> announced the results of the votings;<sup>2</sup> determined the eligibility, in case of question, of persons elected; directed the administering, to civil officers elect, of the oath of office prescribed by Congress; turned over to the new governments the appropriate records, public property and powers, and otherwise facilitated their organization. These orders, many of which involved in their preparation a most careful consideration and great labor, well illustrate the value of the services of the district commanders in

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1. To instance some of these regulations,—bar-rooms and the like were required to be closed on the day of election and for some time before and after; the use or exhibition of fire-arms or dangerous weapons at or near the voting places was prohibited; facilities were afforded for challenging votes; the intimidation, directly or indirectly, of voters was guarded against; military interference, 'unless necessary to repel the armed enemies of the United States or to keep the peace at the polls,' (in accordance with the provision of the Act of Congress of Feb. 25, 1865,) was strictly forbidden; and other precautions were taken against possible fraud or violence. See G. O. 61, First Mil. Dist., 1869; Do. 164, Second Id., 1867; Do. 40, 45, 61, Id., 1868; Circ., Id., March 24, 1868; G. O. 74, Third Id., 1867; Do. 57, 58, Id., 1868; Do. 19, Fourth Id., 1868; Do. 55, Id., 1869; S. O. 40, Fifth Id., 1869. In one order, it was directed that no voter should be compelled to work on the public roads, or to attend court as a suitor, juror, or witness on the day of election, or be subject to arrest on civil process, &c. Do. 61, First Id., 1869. It was further ordered that where a fair vote was prevented by violence, a new election should be held. Do. 61, Second Id., 1868. And it was enjoined that where injuries were inflicted upon persons registering in good faith, the damages should be assessed upon the town or county. Do. 65, Second Id., 1867.

2. One of these orders, for example,—G. O. 19, Fifth Mil. Dist., 1870,—contained tabular statements of the votings in Texas, covering forty-seven pages.

coöperating to bring about the political rehabilitation of the insurgent States.

Such were some of the more salient features of the procedure of Reconstruction. So far as concerns the *military government* exercised during these three critical years,—its efforts to secure an impartial and faithful administration of justice, repress violence and disorder, maintain an efficient police, conserve the public health, relieve the burdens of the unfortunate, protect the humble classes against unequal laws and oppressive usages, and, while earnestly promoting the restoration of the States, to worthily assert the “paramount authority” of the United States, should, it is believed, fairly outweigh, in the estimate of history, the unfrequent manifestations of arbitrary power on the part of individual officials.

## PART III.

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### CIVIL FUNCTIONS AND RELATIONS OF THE MILITARY.

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In PART I have been considered the law and discipline governing the military in the military state; in PART II has been reviewed the special authority exercised by them, in time of war or like emergency, towards enemies and persons under military government or control. In this third and last division of this treatise will be examined the subject of their *civil* relations and duties as officers and soldiers, and the liabilities, as well as rights, attaching to them as citizens.

PART III will be presented under the following Titles:—

- I. Employment of the military in a civil or *quasi* civil capacity.
- II. Liability of the military to civil suit or prosecution.
- III. Other civil relations of the military.

#### I. EMPLOYMENT OF THE MILITARY IN A CIVIL OR QUASI CIVIL CAPACITY.

##### I. FOR THE PROTECTION OF A STATE FROM DOMESTIC VIOLENCE.

Sec. 4 of Art. IV of the Constitution declares that:—“*The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them, \* \* \* on the application of the legislature, or of the executive when the legislature cannot be convened, against domestic violence.*” As observed by the U. S. Supreme Court in *Luther v. Borden*,<sup>1</sup> “it rested with Congress to determine the means proper to be

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1. 7 Howard, 42.



adopted to fulfill this guarantee." So, presently after the adoption of the Constitution, by the Act of Feb. 28, 1795, the President was empowered to call forth the militia, and later, by that of March 3, 1807, to employ the land and naval forces, for the purposes signified.<sup>1</sup> In PART II it has been seen how the Supreme Court, in *Texas v. White*,<sup>2</sup> justified the action of Congress in providing, in view of this constitutional *guarantee*, for the "reconstruction" of the insurrectionary States by the legislation of 1867. Under the section cited, the *protection* of the United States has, in practice, commonly been invoked by governors of States,<sup>3</sup> in emergencies arising when the legislatures are not in session or cannot be assembled soon enough to take the requisite action.<sup>4</sup> The protection sought is afforded by the President, by ordering a sufficient military force to the disturbed locality with the proper instructions for the repression of the existing violence. No military commander or authority inferior to the President can assume to initiate such orders. The troops are not furnished to the governor as a *posse*, nor can they legally be placed under his command or that of any other State official, civil or military. Though employed in a *quasi* civil capacity and for a local and temporary object, they are still U. S. troops, representing the sovereignty of the United States, and can duly act only under the command and direction of the President and their own officers. As their purpose, however, is to aid in the execution of the laws and the restoration of the peace of the State, their action should in general, as far as practicable, be in concert with the action or views of the State authorities.<sup>5</sup> While they should of course move and operate with promptitude and efficiency, no more military power than is reasonably required should be resorted to, nor the disorderly element be treated like an enemy in war unless the emergency is such as to demand extreme measures: often a demonstration in force will be sufficient without a resort to arms.<sup>6</sup>

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1. These statutes are embraced in Sec. 5297, Rev. Sts. And see therewith Sec. 5300.

2. 7 Wallace, 730.

3. The constitutional provision does not apply to cases of domestic violence in Territories. DIGEST, 112.

4. See VIII Opins., 8; DIGEST, 112.

5. See, in this connection, an interesting pamphlet by Col. E. S. Otis, 20th Infantry, entitled "The Army in connection with the Labor Riots of 1877."

6. Atty. Gen. Cushing, in the California Vigilance Committee Case,

## 2. FOR THE SUPPRESSION OF INSURRECTION.

By Secs. 5298, 5299, Title LXIX, Rev. Sts., the President is further authorized to employ the army, (as also the militia and the navy,) for the suppression of insurrection or rebellion against the Government and the execution of the laws of the United States; as also, specially, for the purpose of maintaining the civil rights of people of the States, when divested by violent combinations or conspiracies against the laws of the State or of the United States. Under these Sections, the assistance of the military may be resorted to in any instance of such insurrection or lawless combination, from an isolated case of riotous obstruction to a rebellion of the magnitude of the recent civil war. In the instance of a rebellion of this character the army would assume a purely military and hostile attitude as against an enemy, and the law applicable to the situation would be the law of war or martial law treated of in PART II. In cases of lesser disorders the army would be employed more in a *quasi* civil capacity, as a force to keep the public peace, and similarly as when used to suppress "domestic violence" under the provision of the Constitution heretofore considered; its operations being conducted exclusively under the orders and directions of the President and its immediate commanders.

The active interposition of the military under these two Sections, (as also under Sec. 5297 previously noticed,) is required by Sec. 5300 to be preceded by a proclamation of the President commanding "the insurgents to disperse and retire peaceably to their respective abodes within a limited time." In most cases the

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(VIII Opins., 8,) held that a mere obstruction of law was not enough to base a requisition upon the President for troops, but that a state of *war* should practically exist to authorize it. This is a strained view with which the *practice* has not accorded. "Domestic violence" is not necessarily war or even such a condition as to call for the exercise of martial law. Domestic violence considerably less pronounced than that of the Dorr rebellion, for example, will, it is considered, justify an appeal for military aid, by the authorities of a State, under the Constitution.

1. Recent instances of the proceeding required by Sec. 5300 are those of the proclamations of May 22, 1873, (as to disorders in Louisiana;) of May 15, 1874, (as to Arkansas;) of Sept. 15, 1874, (Louisiana;) of Dec. 21, 1874, (Mississippi;) of Oct. 17, 1876, (South Carolina;) of Oct. 7, 1878, (New Mexico;) of May 3, 1882, (Arizona;) of July 31, 1884, (as to the irruption of persons into the Oklahoma lands in the Indian Territory;)

publication of the proclamation in connection with an array or mobilization of troops will do away with the necessity of a resort to force.

### 3. AS A POSSE COMITATUS.

**Practice under Act of 1789.** It was provided in s. 27 of the Judiciary Act of Sept. 24, 1789,<sup>1</sup> that the marshal appointed for a judicial district "*shall have power to command all necessary assistance in the execution of his duty.*" This provision was at an early period construed as vesting, *by implication*, in U. S. marshals and their deputies an authority to call upon the military forces of the United States as a *posse* to assist them in the execution of the process of the U. S. courts,<sup>2</sup> and this authority was resorted to in numerous cases where without it the laws would have failed to be effectually or promptly enforced. Instructions were repeatedly issued from the Attorney General's Office and the War Department, and by military commanders, as to the right of marshals to require the assistance of the military in cases of necessity, as to the duty of the military to obey their requisitions, and as to the behaviour of the latter when serving on a *posse*. It was enjoined that officers and soldiers so serving should act in subordination to and as directed by the marshal in making arrests, &c., but should use only such force as was necessary and apposite to the object, and should confine themselves strictly to the duties attaching to the special service, initiating no proceeding and assuming no authority beyond the same. But while thus coöperating with and acting under the civil official, the inferiors of the detachment were to observe the principle of military subordination and obey the orders of their immediate military superiors as on occasions of purely military duty.<sup>3</sup>

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and of Nov. 7, 1885, (as to violence and disorder in Washington Territory, directed against the Chinese population.)

1. Now embraced in Sec. 787, Rev. Sts.

2. XVI Opins. At. Gen., 162; DIGEST, 113, 380.

3. See the law and instructions as laid down and communicated in the following papers, opinions and orders: Instructions from Atty. Gen. Evarts to the Marshal of the No. Dist. of Fla., of Aug. 20, 1868; VI Opins. At. Gen., 471; XIII Id., 451; XVI Id., 162; G. O. 96 of 1876; Communication from Headquarters of the Army to Maj. Gen. Meade, Comdg. Dept. of the South, Aug. 25, 1868; G. O. 65, Dept. of the Cumberland, 1868; Circ., Id., Oct. 5, 1868; Circ. Id., March 11, 1870; Do.,

**Limitation of power to summon.** The power to summon the military on a *posse comitatus*, under the Act of 1789, was limited to the marshal or his deputy. No other U. S. civil functionary,—as an officer of the customs or internal revenue officer, for example,—has been empowered to exercise a like authority.

The power is also one that cannot legally be exercised by sheriffs or other *State* officials, who, though they might be authorized to summon members of the army as citizens, could not legally call upon them in their armed and military capacity as officers and soldiers of the United States land forces.<sup>1</sup> The army as such can constitutionally take no part in quelling disorders and preserving the peace in States, or in executing the laws of the States, otherwise than as it may be employed to protect the States against domestic violence under the provision of the Constitution above considered,<sup>2</sup> or to suppress insurrection under Title LXIX, Rev. Sts.

**Effect of the Legislation of 1878.** But the power derived from the Act of 1789 has been abruptly divested by a recent statute and practically exists no longer. This statute is a provision of the Act of June 18, 1878, c. 263, which, in s. 15, declares that—*“From and after the passage of this Act it shall not be lawful to employ any part of the Army of the United States as a posse comitatus, or otherwise, for the purpose of executing the laws, except in such cases and under such circumstances as such employment of said*

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Dept. of Va., March 4, 1870; G. O. 29, Dept. of the Mo., 1870; Do. 3 Id., 1874; Do. 2, Dept. of Texas, 1870; Do. 54, 75, Dept. of the South, 1874; Do. 29, Dept. of the Gulf, 1874; DIGEST, 380, 381. The only substantial point of difference between the instructions of the Attorney General and those of the military authorities appears to be that the former indicate that the marshal is authorized absolutely to require the assistance of the military when and in such force as may in his opinion be necessary, (see Instructions of Atty. Gen. Evarts;) while the latter in effect declare that it is for the officer commanding the troops summoned to decide whether the service required is lawful or necessary. (Communication to Maj. Gen. Meade, *ante*; G. O. 29, Dept. of the Mo., 1870.) The former is the correct view.

1. The armed force for them to summon, if any, is the *militia*. See instances in *Raush v. Ward*, 44 Pa. St. 389; *Curtis v. Allegheny Co.*, 1 Philad. 237.

2. See Instructions of Atty. Gen. Evarts, above noted; also DIGEST, 112, 114, 381.

*force may be expressly authorized by the Constitution or by Act of Congress.*"<sup>1</sup>

This legislation, evolved as it was out of a temporary political antagonism on the question of the extent of the authority of the President to employ the military to preserve order at elections in the States,<sup>2</sup> remains, now that the occasion for its enactment has passed, a mere impediment to the constitutional exercise of the executive power of the nation.<sup>3</sup> In the remoter West especially it has proved a serious embarrassment to the efficient execution of the process of the U. S. courts. Where, indeed, there exists a *combination* to resist the enforcement of the laws, the President may proceed to avail himself of the army, as authorized and prescribed in Secs. 5298-5300, heretofore considered. But for making arrests in individual cases, of persons charged with offences against the United States, the U. S. marshal, although the military stationed in the vicinity may be the only force adequate to effectuate such arrests, is not empowered to avail himself of their assistance under the existing law.<sup>4</sup>

*Excepted cases—Express statutory authority for employment of military for civil purposes.* The Act of 1878 excepts, as has been seen, from its operation, those cases in which the employment of a military force "as a *posse comitatus*, or otherwise, for the purpose of executing the laws," may be "*expressly authorized*" by the Constitution or by statute. While in the Constitution such express authority is nowhere vested in terms, the same is conveyed in sundry sections of the Revised Statutes, as follows:—Sec. 1984, authorizing a resort to the land forces for aid in arresting persons offending against the laws for the protection of civil rights; Sec. 1989, further authorizing the Pres-

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1. Compare, as *in pari materia*, the Acts of June 23, 1879, c. 35, s. 6; and May 4, 1880, c. 81, s. 2.

2. It is singular that the Act of 1878 did not in terms repeal the provision of the Act of Feb. 25, 1865, incorporated in Sec. 2002, Rev. Sts., which in effect expressly authorizes the employment of the U. S. military "to keep the peace at the polls" at elections in the States. On the contrary, it left such provision in full force. See text *post*.

3. Mr. Garfield said of this Act, in the debate on its passage, (45th Cong., 2d Sess., Record, p. 3845.)—"It puts the command of the Army into the hands of Congress."

4. See XVI Opins. At. Gen., 162; also Opins., Id., of Nov. 10, 1881, and April 15, 1882.

ident to employ the land forces in the execution of the provisions of Title XXIV, relating to civil rights; Sec. 1991, requiring military persons to aid in enforcing the law abolishing peonage in New Mexico; Sec. 2002 authorizing the use of the military to keep the peace at elections; Sec. 2062, authorizing the President to assign army officers as Indian agents; Secs. 2118 and 2147, authorizing him to employ the military to remove persons from Indian lands or the Indian country who are there contrary to law; Secs. 2150, 2151 and 2152, authorizing him to employ the army to prevent the introduction of unauthorized persons or things into the Indian country, to destroy distilleries set up therein, to apprehend persons being illegally in such country as well as criminal Indians, to put an end to hostilities between Indian tribes, &c.; Sec. 2190, authorizing the Secretary of War to direct officers of the army to aid in taking the census; Sec. 2460, authorizing the President to employ the military to aid in preserving the timber belonging to the United States in Florida; Secs. 4684 and 4685, authorizing him to employ officers of the army on the topographical work, &c., of the coast survey; Sec. 4792, requiring military officers commanding on the coast to aid in the execution of the quarantine laws; Sec. 5275, authorizing the President to employ the army for the custody of extradited persons; Secs. 5287 and 5288, authorizing him to employ them in executing the neutrality laws; Secs. 5297, 5298, and 5299, authorizing him to employ them in suppressing insurrection, (considered under a previous head;) Sec. 5316, authorizing him to employ them to prevent the removal of vessels or cargoes seized for condemnation as contraband; Sec. 5577, authorizing him to employ them to protect the rights of discoverers of guano.<sup>1</sup> In all such excepted cases the military may still be employed for the execution of the particular law, notwithstanding the general prohibition of 1878.

#### 4. FOR THE EXECUTION OF THE LAWS RELATING TO INDIANS AND THE INDIAN COUNTRY.

**(1.) As to Indians not on Reservations.** It is the policy of the government to assemble all the Indian tribes and bands

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1. With the Secs. here cited, see also Secs. 1959, 2001, 2136, 2149; also G. O. 71 of 1878. And note the Act of June 23, 1879, c. 35, s. 7, by which the Secretary of War is empowered to detail and employ an

upon lands reserved for the purpose, and, with a view to their location and maintenance upon such lands, treaties have been from time to time entered into with them, and appropriations are annually made by Congress. Indians omitting or refusing to enter into treaties or to locate upon reservations, and remaining at large, are in general to be regarded as in a state of actual or *quasi* hostility, and may be treated by the military authorities, under the orders of the President, either as hostile or merely not friendly, as circumstances may dictate. In the latter relation, the attitude of the military toward them is to be one of watchfulness and precaution; in the former they are public enemies, and the *laws of war*, so far as practicably or reasonably applicable, will govern the army in its operations and proceedings against or with regard to them.<sup>1</sup>

**(2.) As to Reservation Indians and the Indian country in general—*The law applicable.*** It is to such Indians and their country that the statutes heretofore indicated specially apply; *viz.* Secs. 2118, 2140, 2147, 2150, 2151, 2152, Rev. Sts., which authorize the employment of the military in the *civil* duty of removing trespassers from the Indian country, in apprehending persons found there in violation of law and conveying them to the civil authorities, in preventing the introduction of spirituous liquors therein, in making arrests of criminals, &c.

***What is Indian country.*** What is to be regarded as Indian country is now well established by the decisions of the courts and rulings of the law officers, as consisting of—“(1) Indian Reservations occupied by Indian tribes; and (2) Other districts so occupied to which the Indian title has not been extinguished.”\*

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officer of the army for the purposes of the education of Indian youth. See DIGEST, 115.

1. “Outside of the well-defined limits of their Reservations, all Indians are under the original and exclusive jurisdiction of the military authorities.” G. O. 20, Div. of the Pacific, 1870. And see Circular, Dept. of the Columbia, Nov. 16, 1870, publishing communication from Commissioner of Indian Affairs concurred in by the Secretary of War.

2. G. O. 97 of 1877. Or, as it has been more recently defined by the Supreme Court in *Ex parte Crow Dog*, 109 U. S., 556,—“All the country to which the Indian title has not been extinguished within the limits of the United States, whether within a reservation or not.” And see further, on this subject, *Am. Fur Co. v. U. S.*, 2 Peters, 358; *U. S. v. Forty-three Gals. of Whiskey*, 93 U. S., 188; *Bates v. Clark*, 95 U. S.,

The question whether Indian title has or not been extinguished as to any district will of course mainly depend upon the treaty or treaties entered into with the tribe.<sup>1</sup> Before making arrests of persons or seizures of property, as being illegally within Indian country, (not included in a reservation,) officers of the army will properly inform themselves as to whether the district is Indian country in fact; otherwise they may become subject, as in the case of *Bates v. Clark*,<sup>2</sup> to a civil suit and judgment for damages.

***Removal of trespassers under Secs. 2118, 2147.*** Authority to remove intruders from a public reservation when necessary for the protection of property of the United States is a measure of public self-defence which would exist in the absence of statutory provision. Under the above Sections relating to the removal of persons who are in the Indian country in violation of law, the military may be employed summarily to remove therefrom persons who are there for the purpose of making settlements on the land, or carrying on traffic in violation of the laws regulating intercourse with the Indians, or for any other illegal or unauthorized purpose, or who, as speculators, outlaws, vagabonds, &c., are simply commorant there contrary to the provisions of an existing treaty with the tribe or without the permission of the agent or officer in charge.<sup>3</sup> The above statutes, considered in connection with Secs. 2150 and 2151, are regarded as contemplating the mere *removal* of persons as intruders, and the *apprehending* of persons with a view to action by the civil authorities, as distinct proceedings,—so that the military may be

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204; *U. S. v. Seveloff*, 2 Sawyer, 311; *In re Carr*, 3 Id. 318; *U. S. v. Leathers*, 6 Id. 17; *U. S. v. Sturgeon*, Id. 29; *U. S. v. Martin*, 8 Id. 473; XIV Opins. At. Gen., 290, 327; G. O. 98 of 1873; Do. 40 of 1874; Do. 97 of 1877; DIGEST, 291.

1. See the communication of the Secretary of the Interior, published in G. O. 97 of 1877, as to a certain district formerly Indian country but restored to the public domain by the operation of treaties with the Sioux and other tribes.

2. 95 U. S., 204.

3. VI Opins. At. Gen., 665; XVI Id., 268, 451; XV Id., 601; G. O. 72 of 1870; Do. 16 of 1880; Do. 83 of 1884; DIGEST, 114. Where trespassers have intruded in a body, especially when their intrusion is concerted or organized, formal notice to them to quit is sometimes given before resorting to military force. See, in this connection, the two recent proclamations of the President, of April 17 and Aug. 7, 1885.



employed simply to remove without apprehending. Whether persons are or not in the Indian country in violation of law is a question to be determined by the executive authorities charged with the custody and protection of the Indians and the execution of Indian treaties. "The courts will not review their decision in these matters."<sup>1</sup>

***Apprehension of persons under Secs. 2150 and 2151.***

The authority and duty of officers of the army under these Sections, and the necessity for observing strictly their terms, are pointedly illustrated by the rulings of the U. S. Circuit Court for the Ninth Circuit in the cases of *In re Carr*<sup>2</sup> and *Waters v. Campbell*,<sup>3</sup> and of the same Court for the Eighth Circuit in *U. S. v. Crook*.<sup>4</sup>

In the two former of these cases, it was held, in regard to the action of such officers under Sec. 2151—(1) that as the officer, in making the arrests authorized, acts in a *civil* capacity, his proceeding should be justified by affidavit or affidavits, (made by himself or other person or persons,) in accordance with the provision of Art. IV of the Amendments of the Constitution which declares that "no warrants shall issue but upon probable cause supported by oath or affirmation and particularly describing the place to be searched and the person or things to be seized;" (2) that the officer is in no event empowered to detain a person arrested longer than five days before commencing to remove him to the custody of the civil authorities, and that, if he has no means of removing or commencing to remove his prisoner within that period, he must discharge him; (3) that during the five days, or during the process of removal, he can confine or restrain the prisoner only so far as may be necessary to his safe-keeping, and cannot put him to labor or subject him to military discipline. In the case of *In re Carr*, a proceeding upon *habeas corpus*, the prisoner was held entitled to be discharged from the custody of the officer because he had been held more than five days—in fact "nearly ninety days"—before an attempt was made to remove him. In *Waters v. Campbell*, an action for false imprisonment, the officer

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1. *U. S. v. Sturgeon*, 6 Sawyer, 30.

2. 3 Sawyer, 316.

3. 5 Sawyer, 17. And see *Barclay v. Goodale*, 3 Id., 318.

4. *Ex rel. Standing Bear and twenty-five others*, 5 Dillon, 453.

was held liable in \$2000 damages, for the reason that, in the absence of facilities for removing his prisoner, he had detained him fifty-six days before removal, and, in detaining him, had required him to do "fatigue duty" of the same character as that performed by the soldiers at the post. The court held that while the party, for the purposes of custody, could legally be placed in the guard-house, he "ought not, being a non-military person—a citizen merely under arrest upon the charge of having committed a non-military crime—to have been compelled to work during his confinement or to perform any duty unless it was to take care of his person."

In the case of *U. S. v. Crook*,—a proceeding instituted for the release on *habeas corpus* of certain Ponca Indians, apprehended by the military under Sec. 2150,—the provision of this Section, requiring the removal of apprehended persons "by the nearest convenient and safe route to the civil authorities of the judicial district, &c., to be proceeded against in due course of law," was ably interpreted by Dillon J. These Indians had left without authority the Indian Territory in which they had been placed, and betaken themselves to the Omaha Indian Reservation. It was held that, upon their apprehension by the military under Sec. 2150, they 'should have been brought to Omaha and turned over to the U. S. Marshal and Attorney,' and that, as this course was not pursued, but it was attempted to remove them back to the Indian Territory against their consent, they were entitled to be discharged from military custody as illegally restrained of their liberty.<sup>1</sup>

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1. To quote from the opinion of the court:—When troops are employed under Sec. 2150, "they must exercise the authority in the manner provided by the section. \* \* \* The duty of the military authorities is here very clearly and sharply defined, and no one can be justified in departing therefrom especially in time of peace. \* \* \* In time of peace no authority civil or military exists for transporting Indians from one section of the country to another without the consent of the Indians, nor to confine them to any public reservation against their will; and where officers of the government attempt to do this, and arrest and hold Indians who are at peace with the government, for the purpose of removing them to and confining them on a reservation in the Indian Territory, they will be released on *habeas corpus*." The Court add, (p. 467,)—"In what Gen. Crook has done in the premises, no fault can be imputed to him. He was simply obeying the orders of his superior officers." And see the further reference to Gen. Crook's position in the case, on page 454.

(3.) **Relations of the Military to Indian Agents.** The military, as employed in the Indian country, under the special orders or general instructions of the President, are employed in great part as a force *auxiliary* to the Indian Agents, detachments of the army being frequently stationed upon or near Indian reservations, in order to render to such Agents the needful coöperation and assistance when required and legally authorized to be rendered. Where they make arrests or seizures under the statutes above specified, or act—as in general they may—as a police for the protection of public property or the keeping of order on a reservation, they will often and properly do so at the instance of an Agent who has first become apprized of the occasion for action; the commanding officer not usually taking the initiative where there is an Agent present.<sup>1</sup> It need hardly be added that the military cannot legally be employed in aid of the authority of an Indian Agent, where such employment would be within the prohibition of the Act of 1878 above considered.

(4.) **Special Authority of Officers of the Army when acting as Indian Agents.** Where a military officer who is also a commander of troops has been appointed by the President as an Indian Agent under Sec. 2062, Rev. Sts.,<sup>2</sup> he may at the same time exercise both the function of Agent and that of military commander. As Agent he acts, like any other Indian Agent, by the direction of the Secretary of the Interior, and is under his exclusive authority. As commander he may be empowered to employ his force for the arrests, seizures, &c., of the class already considered. He will be careful not to confound his two capacities, and, in time of peace, not to use his command against persons or their effects except where its use may be expressly authorized by statute, or where its aid is required to prevent trespassing upon public property or as a police for the keeping of order. And in employing his force for purposes of arrests, &c., under Secs. 2150 and 2151, Rev. Sts., he will remember that he does so not exclusively in a military but in a *quasi* civil character, and must

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1. See G. O. 20, Div. of the Pacific, 1870; Circ., Dept. of the Mo., May 22, 1876; also XV Opins. At. Gen., 601.

2. That this agency is a *civil office*,—Sec. 2062 in effect ingrafting an exception upon the provision of Sec. 1222 prohibiting the holding of civil office by officers on the active list of the army,—see XIV Opins. At. Gen., 573.

proceed strictly as the law prescribes.<sup>1</sup> An army officer appointed and acting as Indian Agent, who has no military command, will be authorized, in a proper case, to call upon the Department or other proper commander for the assistance of troops.

***Jurisdiction of criminals.*** An officer of the army serving as Indian Agent may sometimes be called upon to take action with reference to the disposition of persons charged with homicide or other crime committed upon the reservation. Where the alleged criminal, or the individual killed or injured, is a white man, the case will in general properly be disposed of by the U. S. District Court, or by the Territorial or State Court, according as either may have jurisdiction,<sup>2</sup> and it will devolve upon the Agent to facilitate the arrest, by the proper official of such court, of the offender. Where both the supposed criminal and the party killed or injured are Indians, the jurisdiction of the case will in general, in the absence of any treaty provision to the contrary, properly belong to the *tribal court*, as indicated in Sec. 2146, Rev. Sts., and it will be the duty of the Agent to facilitate the trial and punishment of the offender according to the *laws and usages of the tribe*.<sup>3</sup>

**(5.) Exceptional cases of Officers in charge of Indians.** Where an officer of the army—not as an Indian agent but in his military capacity—is placed in charge of captured or surrendered Indians held upon a reservation as *prisoners of war*, he exercises an exceptional authority not strictly within

1. See *In re Carr*, and *Waters v. Campbell*, above cited.

2. See, on the subject of the jurisdiction of the civil courts over Indians,—*Worcester v. Georgia*, 6 Peters, 515; *U. S. v. Rogers*, 4 Howard, 567; *U. S. v. Holliday*, 3 Wallace, 407; *U. S. v. Bailey*, 1 McLean, 234; *U. S. v. Cisna*, Id., 254; *U. S. v. Ward*, 1 Woolworth, 17; *U. S. v. Yellow Sun*, 1 Dillon, 271; *Ex parte Reynolds*, 5 Dillon, 394; *Ex parte Kenyon*, Id., 385; *U. S. v. Bridleman*, 7 Sawyer, 243; *U. S. v. Martin*, 8 Id., 473; *U. S. v. Sacoodacot*, 1 Abbott, U. S., 377; *U. S. v. Davis*, 15 Minn. 369; *U. S. v. Burdick*, 1 Dakota, 142; *Wiley v. Keokuk*, 6 Kan. 94; *Wiley v. Manatowah*, Id. 111; *Rubideaux v. Vallie*, 12 Id. 28; *State v. Doxtater*, 47 Wis. 278; *State v. Harris*, Id. 298; *State v. Tachanatah*, 64 No. Ca. 614; Opins. At. Gen., of Aug. 25, 1881, Oct. 13, 1882, and June 27, 1883.

3. *Ex parte Crow Dog*, 109 U. S., 556, 571-2; Opin. At. Gen., of March 4, 1875, published in G. O. 43 of 1875; Opin. of Same, of March 24, 1885, in case of Eschilla, an Apache Yuma Indian. See also *Holden v. Joy*, 17 Wallace, 211; and compare *Horland v. Pack*, Peck, (Tenn.), 151.

the scope of the general statute law above considered. This authority is a modified form of military government under the laws of war, and is, strictly, without limitation except in so far as it may be restricted by those laws or the orders of military superiors. In his government, however, the officer will properly not resort to the summary proceedings peculiar to a war status except in extreme cases, and where a difficulty can be disposed of under the existing statute law applicable to reservation Indians, he will dispose of it accordingly rather than by a resort to the discipline of camps. The discipline which he will exercise will in general consist in preserving peace and good order, in bringing offenders to trial and punishment by their own tribunals or the proper civil court, in preventing Indians from leaving the reservation without authority, in enforcing such health regulations as circumstances may require, and in seeing that the provision made by Congress for the care and maintenance of the Indians is efficiently and equitably executed.<sup>1</sup>

**(6.) Relation in general of the Military toward peaceable Indians.** It remains to remark that the relations of the military with the friendly Indians should be distinguished by a particular and scrupulous justice, humanity and discretion, for the reason that the former specially represent to the latter the power of the United States. For an officer or soldier to fail in his duty toward such Indians is a peculiarly serious offence, since it materially compromises the government and sensibly impairs its authority over this class of its subjects, and moreover tends to induce them to lapse into hostility. In a case, in the Department of the Columbia,<sup>2</sup> of an aggravated injury inflicted by a soldier upon an Indian, the offence was characterized by the Department Commander, (Gen. Canby,) as a graver one than if committed by a civilian, because—as it was expressed—“the Army has been made, under the direction of the President, an important agent in the execution of the laws regulating intercourse with the Indian tribes, and such acts by soldiers are not only violations of the statute but gross breaches of discipline and of trust.”

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1. See Memo. of Agreement between the Secretary of War and the Secretary of the Interior as to the Apache Indians on the San Carlos Reservation, dated July 7, 1883.

2. G. O. 10, Dept. of the Columbia, 1871.

# 5. FOR THE REMOVAL OF INTRUDERS FROM MILITARY RESERVATIONS.<sup>1</sup>

The enactment of 1878 above cited restricted the employment of the military "*for the purpose of executing the laws,*" but not otherwise. It did not therefore affect the general authority of the President *as Commander-in-chief* to use the army for the removal of trespassers and intruders from the military reservations or posts under his command, this not being properly an execution of a law but a form of protecting the public property in his charge and exercising an ordinary and reasonable police power over the same. The authority of the President to employ the military forces for this purpose exists as fully as does the authority, expressly—as we have seen—conferred by *statute* for the removal of intruders from the Indian lands or country. Its existence and exercise from an early period have been repeatedly recognized and sanctioned in legal opinions and General Orders.<sup>2</sup>

Such authority extends to the expulsion of squatters or other persons entering upon and occupying the land whether or not under a claim of title, as well as of all persons coming within the reservation for illegal traffic or other unauthorized and improper purpose, to the prejudice of military discipline or the detriment of the public interests. In removing the person his property may be removed with him. But no unnecessary force should be employed in the process, nor should the use of force be continued after the removal has been effectually accomplished.<sup>3</sup> And where convenient and practicable, a reasonable notice to quit will properly be given before force is resorted to.<sup>4</sup>

1. As to what is a *military reservation*, and as to the power of the President to reserve lands for military purposes, see DIGEST, 336, and authorities there cited.

2. I Opins. At. Gen., 164, 471, 475, 703; II Id., 574; III Id., 268, 566; IV Id., 407, 489; VII Id., 534; IX Id., 106, 476, 521; X Id., 70, 184; G. O. 62, 74, of 1869; Do. 26 of 1883; Do. 216, Fifth Mil. Dist., 1869. And see Army Regs., par. 138.

3. "Due caution should be observed, however, that, in executing this duty, there be no unnecessary or wanton harm done to persons or property." IX Opins. At. Gen., 476.

4. As to the authority to grant to a civilian a *license* to enter upon and occupy, subject to the will of the Government, the soil of a military reservation, in contradistinction to a usufructuary interest in the land as property, (which can be granted only by the authority of Congress.)

**Attitude of the Military toward the Civil community when not authorized to be employed as heretofore indicated.** Except as and when employed and ordered under the statutes and authority above specified, the U. S. military are not empowered to intervene or act *as such* on any occasion of violation of local law or civil disorder, or in the arrest of civil criminals. While officers or soldiers of the army may individually, in their capacity of citizens, use force to prevent a breach of the peace or the commission of a crime in their presence,<sup>1</sup> they cannot, (except as above,) legally take part, in their military capacity, in the administration of civil justice or law. Their attitude, therefore, toward the civil community and the civil authorities, at a period of riot or lawless disturbance should in general be a strictly neutral one: whatever the temptation or occasion, they should remain simply passive until required by the President, through their immediate commanders, to act. A zealous officer is sometimes induced, especially when serving on a western frontier, to intervene at least for the arrest of a criminal whom the civil authorities are apparently powerless to reach, and who, in the absence of any interposition on the part of the military, will probably escape legal punishment. Such intervention, however, will almost invariably be unauthorized by law, and will subject the officer and the members concerned of his command to actions for false arrest and imprisonment.<sup>2</sup>

## II. LIABILITY OF THE MILITARY TO CIVIL SUIT OR PROSECUTION.

**General principles of Amenability—*Subordination of military to civil.*** It is not unfrequently enunciated as a general principle that the military authority is subordinate to the civil.<sup>3</sup> This, however, is not to be understood as implying that

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the student is referred to the Title—"Public Property, Disposition of, &c.," in the DIGEST, pp. 400-408, where the general subject will be found to be very fully illustrated.

1. *Burdett v. Abbott*, 4 Taunt. 449; *Simmons* § 1097-1100. And see *ante*, Vol. I, p. 836—"Twenty-Fourth Article."

2. See DIGEST, 114-115.

3. *Dow v. Johnson*, 100 U. S., 169; *Ex parte McRoberts*, 16 Iowa, 601; *Rawle on the Const.*, 161; *Halleck, Int. Law*, 393; VI *Opins. At. Gen.*, 415, 417, 451; *Tytler*, 153; *Willes C. J.*, in *Frye v. Ogle*, 1 *McAr-*

the military state *as such* is not fully governed by its own code, or that the army, in time and on the theatre of war, is liable to be controlled by other than military orders. What is chiefly meant by the proposition is that officers and soldiers of the army do not become relieved of their civil obligations by assuming the military character, but, as citizens or civilian inhabitants of the country, remain liable, equally with other civilians, to the jurisdiction of the civil courts for offences against the local laws, as well as for wrongs done or responsibilities incurred toward individuals.<sup>1</sup> On the other hand, the soldier is equally *entitled*, in a proper case, to the benefit of the civil law—has, as it is expressed by Samuel,<sup>2</sup> “a property” in the same. Thus the military law does not ‘abrogate, or derogate from’ the general law of the land,<sup>3</sup> but is in fact in harmony with it.<sup>4</sup>

**Exemption from arrest.** By Sec. 1237, Rev. Sts.,<sup>5</sup> enlisted men are expressly exempted from arrest on civil process, except for certain debts contracted before enlistment. The statute law does not extend this exemption to officers.<sup>6</sup> The general principle, however, of public policy, that public officers shall not be subject to such arrest when engaged in the performance of their official duties, extends to and protects officers of the army equally with other officials.<sup>7</sup> But neither the statutory exemption nor principle indicated extends to arrest on *criminal* process.<sup>8</sup>

**Double amenability.** That a military person may be amenable both to the military and the civil jurisdiction for the same

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thur, 344; Clode, M. L., 144-5; O'Brien, 26-28; DIGEST, 29, 215. And compare the declarations of the Continental Congress on this subject, in 2 Jour., 68, 232, 572; 3 Id., 77, 211, 243.

1. “The soldier is still a citizen, and as such is always amenable to the civil authority.” *State v. Sparks*, 27 Texas, 632. The fact that a party is an officer in the public service of the United States is not sufficient, as a ground of *comity* or *public policy*, to induce a State court not to entertain a suit against him. *Wilson v. Mackenzie*, 7 Hill, 100.

2. Page 183.

3. *U. S. v. Cashiel*, 1 Hughes, 556.

4. 1 Bishop, C. L. § 46.

5. The original of this provision was an enactment of March 16, 1802.

6. *McCarthy v. Lowther*, 3 Kelly, 397; *Ex parte Harlan*, 39 Ala., 565; *Moses v. Mellett*, 3 Strobb. 210.

7. *U. S. v. Kirby*, 7 Wallace 483; *Coxson v. Doland*, 2 Daly, 66.

8. See authorities cited in last note.



act, is a further principle which has heretofore been remarked upon with reference especially to conduct of a criminal character. We have seen that where the acts constituting a military offence involve also an offence against the laws of the United States or of the State, the officer or soldier may be brought to trial both by a court-martial for the offence against the Articles of war and by a civil tribunal for the civil crime; the court which first assumes jurisdiction, by the arrest of the offender or otherwise, being the one to be permitted first to pass upon the case.<sup>1</sup> In the same manner a military person may be liable to a civil suit on account of a trespass, &c., for which he has been tried or may be triable by a court-martial as a breach of military discipline. Thus an officer liable to military trial for an illegal punishment or other unauthorized treatment of a soldier, or for the unauthorized seizure of the property of a citizen, may, either before or after such trial, be sued in damages for the injury or loss to the individual.

**Official and discretionary acts.** It is also a general principle, applicable to officers of the army equally with other public officers, that such officials are not to be made civilly responsible for the consequences of the ordinary and regular discharge of their official duties.<sup>2</sup> Were it otherwise, "no man," as was observed by the court in a leading English case,<sup>3</sup> "would accept office on these terms." It is a further principle, similarly applicable, that where such officers are invested with *discretion* as to the matter of the performing of an official act, they cannot be held to account for such performance in the same manner as if their function were *ministerial* only, but their acts, though mistaken, are in general to be presumed to be authorized and legal.<sup>4</sup>

1. On this subject, see authorities cited under "Jurisdiction as affected by Amenability to Civil Proceedings," *ante*, Vol. I, p. 111.

2. *V Opins. At. Gen.*, 759; *Wilkes v. Dinsman*, 7 Howard, 89; *Shackford v. Newington*, 46 N. H. 415; *Barton v. Fulton*, 40 Pa. St. 157; *Fenwick v. Gibbs*, 2 Desau. 629; *Stewart v. Southard*, 17 Ohio, 402.

3. *Gidley v. Ld. Palmerston*, 2 Brod. & Bing. 286.

4. See *Kendall v. Stokes*, 3 Howard, 97; *Wilkes v. Dinsman*, 7 Id., 89; *Allen v. Blunt*, 3 Story, 742; *Durand v. Hollins*, 4 Blatch. 451; *Druecker v. Salomon*, 21 Wis. 621.

Compare here the cases in which it has been held by the Supreme Court that public officers cannot be required, through a writ of mandamus or injunction, to perform acts as to the doing or not doing of which they are invested with an official discretion—*i. e.* acts which are not purely ministerial. *Marbury v. Madison*, 1 Cranch, 137; *U. S. v. Seaman*, 17

**Forms of Civil Amenability.** The above general principles having been adverted to, we proceed to consider the subject of the amenability of military persons to civil suit or prosecution under the following heads—1. Amenability to the United States; 2. Amenability to other military persons; 3. Amenability to civilians.

**1. Amenability to the United States—*Criminal Liability.*** This is incurred where the party becomes chargeable—(1) either with the commission of a crime of one of the classes known as crimes against the operations of the government, crimes against justice, acts of official misconduct, &c.,<sup>1</sup> made punishable in Title LXX of the Revised Statutes or otherwise; (2) or with the commission of one of the more familiar crimes, such as murder, manslaughter, larceny, arson, &c., similarly made punishable when committed in a place over which the United States has exclusive jurisdiction,<sup>2</sup> or in respect to public property;<sup>3</sup> (3) or with the commission of treason.

***Civil Liability.*** As a general rule of law, all public officers are liable to the United States for any pecuniary loss to the same which may be incurred by them in the course of the discharge of their public duties.<sup>4</sup> This principle is especially applied in practice to cases of disbursing officers who have become chargeable with deficits of public money or failure to account for public property entrusted to them for a public purpose. Where bonded

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Howard, 230; *U. S. v. Guthrie, Id.*, 284; *Gaines v. Thompson*, 7 Wallace, 347; *The Secretary v. McGarrahan*, 9 Wallace, 298; *Litchfield v. The Register & Receiver, Id.*, 575; *Marquez v. Frisbie*, 101 U. S., 473. And see *Ex parte Reeside*, Brunner, 571; *U. S., ex rel. Warden v. Chandler*, 2 Mackey, 527.

1. Such as counterfeiting, perjury, extortion, accepting bribes, &c.

2. As by Secs. 5339, 5341, 5345, 5346, 5348, 5356, 5385, Rev. Sts. See as leading cases of this class of crimes, *U. S. v. Carr*, 1 Woods, 484, a case of the killing by a soldier of another soldier at Fort Pulaski, in 1872; *U. S. v. Travers*, 2 Wheeler, Cr. C., 490, a case of a killing of one marine by another at the Charlestown Navy Yard, in 1814; *U. S. v. Cornell*, 2 Mason, 91, a case of the killing by a soldier of another soldier at Fort Wolcott, Newport, in 1810.

3. See Secs. 5439, 5456, 5488, 5490, 5491, 5492, 5495, 5496, Rev. Sts., and Act of March 3, 1875, making punishable embezzlement, larceny, &c., of public funds or other property.

4. Cooley, *Prins. of Const. Law*, 123.

officers, they may in general be sued either with their bondsmen or separately.<sup>1</sup>

As has been noticed in treating of the Sixtieth Article of War,<sup>2</sup> the laws enacted for the safe-keeping and proper disposition of the public moneys<sup>3</sup> are especially strict and specific, making officers personally liable for amounts lost in their charge, and constituting their acts legal embezzlement when perhaps the loss may have resulted from no fault of their own but from some incident, (such as the failure of a bank in which their funds had been regularly deposited,) which could not have been foreseen or guarded against.<sup>4</sup> In some extreme cases indeed,—as where money has been taken from disbursing officers, (when acting in the line of their duty and without fault or negligence on their part,) by capture, robbery, theft, or otherwise,—provision is made by statute for relieving them from liability by application to the Court of Claims;<sup>5</sup> in other cases they have in general no other recourse except to apply to Congress for a special act for their relief.

Whether an officer can be made personally responsible for losses of public money incurred by his subordinates will depend upon the official relation which, under the existing law, they bear to him or to the United States. If they are his own appointees or employees, or merely clerks, &c., acting as his assistants, he will in general legally be liable for their deficits: if they are, equally with himself, distinctive officers of the United States, appointed or commissioned by a common superior, the mere fact that they may exercise their functions under his direction will not, (in the absence of any law or regulation to the contrary,) render him pecuniarily responsible for their shortcomings, but they will themselves, on their bonds or otherwise, be personally holden for their respective losses.<sup>6</sup>

The civil liability of an officer to the United States for public

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1. The bonds required of disbursing officers of the army and their sureties are in express terms *joint and several*. As to the liability of sureties, &c., see DIGEST, 126-131, Title—"Bond."

2. Vol. I, p. 1015-1016.

3. See Chapter Six of Title LXX, Rev. Sts.

4. See *U. S. v. Freeman*, 1 W. & M. 45.

5. Secs. 1059, 1062, Rev. Sts.

6. Compare XIV Opins. At. Gen., 268, 474, 485, as to the liabilities to the United States for public moneys disbursed, &c., of the Commissioner of the Freedmen's Bureau and his subordinates.

funds may sometimes be conveniently enforced by way of a counterclaim or offset interposed on the part of the government in a case in which he has himself instituted suit in the Court of Claims for moneys claimed to be due him as pay, allowances, &c. Marked cases of such counterclaims adjudged against officers of the army are to be found in the recent decisions of that court.<sup>1</sup>

**2. Amenability to other Military persons—*For acts as members of courts-martial.*** It is a general principle of law that a judicial officer cannot be made liable in an action for damages for any judgment, however erroneous, that he may have rendered, provided he had jurisdiction of the case.<sup>2</sup> So, while the members of a court-martial may be made thus liable to an officer or soldier tried thereby, where the court was without jurisdiction, or its proceedings or sentence were otherwise unauthorized and illegal,<sup>3</sup>—for error merely in their rulings or judgment they are not subject to a civil action.<sup>4</sup> Suits against members of courts-martial have not been frequent. In the old and often-cited English case of *Frye v. Ogle*,—a suit by a naval officer against the president of a naval court-martial by which he had been tried,—the plaintiff recovered £1000 damages, the court being adjudged to have exceeded and abused its authority in a most arbitrary manner.<sup>5</sup> In the later case, however, of *Mann v. Owen*,<sup>6</sup> in which an officer of the British army sued the president of a court-martial, (which had sentenced him to be dismissed,) on the ground that it had no jurisdiction,—having tried him, under the Article corresponding to our present Art. 62, for an act which he claimed was not within the purview of such

1. See, for example, *Miller v. U. S.*, *Montgomery v. U. S.*, and *Runkle v. U. S.*, 19 Ct. Cl. 338, 370, 396.

2. *Druecker v. Salomon*, 21 Wis. 621. And see *Milligan v. Hovey*, 3 Bissell, 13; *Tyler v. Pomeroy*, 8 Allen, 484.

3. Thus, to cite an extreme case, if an accused dies under the infliction of an illegal sentence, the members of the court will be "liable to be hanged." *Warden v. Bailey*, 4 Taunt. 77.

4. See *Vanderheyden v. Young*, 11 Johns. 150.

5. 1 *McArthur*, 229, 344; *Tulloch*, 92; *Franklyn*, 26. In *Moore v. Bastard*, 4 Taunt. 70, the officer recovered £300 in a suit against the president of his court-martial for an illegal and arbitrary assumption of authority. [At the date of this case and that of *Frye v. Ogle*, courts-martial or their presidents exercised some of the powers now exercised by commanders.]

6. 9 Barn. & Cres. 595.

Article,<sup>1</sup>—the civil court held otherwise and gave judgment for the defendant. In the case of *Jekyll v. Moore*,<sup>2</sup> the officer who preferred the charges sued the president of the court-martial by which they were tried, the ground of action being that the court, in "fully and honorably" acquitting the accused, had reflected upon the charges as "malicious." But this was held by the civil court to be *not* an abuse of power on the part of the court-martial but an exercise of an authority sanctioned by military law, and the action was not sustained. In the further English case of *Home v. Bentinck*,<sup>3</sup> it was held that an alleged injurious statement in the opinion of a court of inquiry furnished no ground for an action of libel, by the officer claiming to be injured, against the president of the court; the opinion, rendered as it was to the proper military superior, being a privileged communication.

In this country, the principle of the liability to damages of the members of a court-martial acting without jurisdiction was recognized in a few early cases.<sup>4</sup> In the later and more important case of *Milligan v. Hovey*<sup>5</sup> and others, where the action was brought by a *civilian* who had been sentenced to death against the members of the military commission which tried him, (and the officers who caused his arrest, &c.,) judgment was given for the plaintiff on the ground that the proceedings of the commission had previously been held void for want of jurisdiction by the U. S. Supreme Court.<sup>6</sup> In view, however, of the fact that the defendants had acted in good faith under the orders of the President and that their proceedings had been approved by him, (evidence of which was admitted in mitigation of damages,) the actual damages awarded by the jury were merely nominal.

It has been noticed by Griffiths<sup>7</sup> that the fact that the court, in taking the action which has given rise to the suit, consulted and proceeded upon the opinion of its judge advocate, cannot affect the question of its legal liability. This is a fact, however,

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1. See the reference to this case under the "Sixty-Second Article" in Vol. I, pp. 1036, 1044.

2. 2 Bos. & Pull. (N. R.) 341.

3. 2 Brod. & Bing. 130.

4. See *Shoemaker v. Nesbit*, 2 Rawle, 201; *Duffield v. Smith*, 3 S. & R. 590,

5. 3 Bissell, 13.

6. In *Ex parte Milligan*, 4 Wallace, 2.

7. Page 42. And see *O'Brien*, 222, 223.

which it is entitled to have considered, as showing good faith, upon the question of the *quantum* of damages.

***For executing an illegal sentence of a military court.***

That an officer who executes the sentence of a military tribunal which was without jurisdiction, or whose proceedings or judgment were otherwise illegal so that the sentence is invalidated, is a trespasser, and liable to an action for damages on the part of the person sentenced, has been asserted by the courts in several cases.<sup>1</sup> Suits of this kind, however, have been rare. To render the officer liable it is not indeed necessary that he should have acted with any personal *animus* against the accused. But in the absence of such *animus*, and where it appears that the defendant, though acting illegally, simply discharged what he believed to be an official duty, "vindictive" damages will not be awarded.<sup>2</sup>

***For wrongs and injuries in general.*** Actions have not unfrequently been instituted, (more frequently, however, in England than in this country,) by officers or soldiers against superior officers for wrongs alleged to have been done them by such acts as—unauthorized arrest and imprisonment, malicious prosecution before a military court, preferring of false charges, libel in an official report, and illegal punishment or unjustifiable violence.

In cases of alleged *unauthorized arrest and confinement*, the civil courts have in general refused to afford relief except where the act was absolutely illegal,<sup>3</sup> or where absence of probable cause, (in making the arrest, initiating the proceeding, &c.,) and the existence of malice, on the part of the defendant, have been established by the evidence.<sup>4</sup> Where the plaintiff has failed to show

1. *Wise v. Withers*, 3 Cranch, 331; *Dynes v. Hoover*, 20 Howard, 65; *Fisher v. McGirr*, 1 Gray, 45; *Bell v. Tooley*, 11 Ire. 605; *White v. McBride*, 4 Bibb, 62; *Hutton v. Blaine*, 2 S. & R. 78.

2. See *Milligan v. Hovey*, 3 Bissell, 13.

3. As an instance of an officer without merits recovering damages because of an illegality in the mere form of his imprisonment, see *Lieut. Allen's Cases*. Simmons § 752, 780. The fact, however, that he was without merits, having been duly convicted of crime, was held materially to affect his claim to damages. *Id.*

4. *Sutton v. Johnstone*, 1 Term, 493; *Freer v. Marshall*, 4 Fost. & Fin. 485; *Keighly v. Bell*, *Id.* 763; *Dawkins v. Ld. Rokeby*, *Id.* 806; *Boughton v. Jackson*, 18 Q. B. 378; *Lieut. Blake's Case*, 2 M. & S. 428. The most essential point to establish is the absence of probable cause, since from this the element of malice may generally be implied. *Sutton v. Johnstone*.

these elements, the case has been regarded as one of purely military right or liability which could properly be disposed of only by a court-martial, and the civil action has not been sustained. As remarked by the court in *Dawkins v. Ld. Rokeby*,<sup>1</sup> "cases involving questions of military discipline and military duty alone are cognizable only by a military tribunal and not by a court of law." Or, as it is more briefly expressed in another report of the same case,<sup>2</sup> "military matters between military men are for military tribunals to determine." Civil courts indeed have always evinced a disinclination to enter upon controversies of this nature.<sup>3</sup>

In cases of this class arising in time of *war* stricter proof of absence of probable cause or malice will in general be required than in cases occurring in time of peace.<sup>4</sup>

Malice may sometimes be inferable from a *protracted arrest*. In certain cases, however, of this class in which the ground of action was an arrest and confinement for an *unreasonable period* (several months) without trial, judgment was given for defendant where it appeared that the act was not "wanton or oppressive;"—as where the defendant had himself no power to convene a court;<sup>5</sup> or where the delay was caused by the absence of witnesses or an exigency of the service.<sup>6</sup> So, the defendant was held not liable where a delay of two months to discharge a prisoner, after he had been acquitted, was occasioned by the failure of a

1. 8 Law Rep. 271.

2. 4 Fost. & Fin. 837. And, to a similar effect, see *Keighly v. Bell*, Id. 736; *Freer v. Marshall*, Id. 485; In the matter of *Poe*, 5 B. & Ad. 681; *In re Mansergh*, 1 B. & S. 400; *Dawkins v. Paulet*, 5 L. R. 94.

3. "I cannot help observing upon the extreme impropriety of this court, a civil court, unacquainted with military matters, coming to a conclusion upon matters which military men know best." Willes J., in *Dawkins v. Rokeby*. And see other cases cited in last note; also *Tyler v. Pomeroy*, 8 Allen, 484. In the recent case of *Holbrow v. Cotton*, 9 Quebec L. R., 105, (an action of slander brought by a militia soldier against his commanding officer for charging him with stealing an article of military property,) the court say: "All matters of complaint of a purely military character are to be confined to the military authorities. Military discipline and military duty are cognizable only by a military tribunal and not by a court of law."

4. *Warden v. Bailey*, 4 Taunt. 66; *Sutton v. Johnstone*, 1 Term, 493. And see *Tyler v. Pomeroy*, 8 Allen, 484.

5. *Keighly v. Bell*, 4 Fost. & Fin. 763.

6. *Lieut. Blake's Case*, 2 M. & S. 428.

superior to take final action upon the proceedings.' In other cases, however, where *malice* clearly appeared, the plaintiff recovered damages for an unreasonably protracted arrest without trial. Thus in *Hannaford v. Hun*,<sup>2</sup> where the plaintiff, when finally tried by court-martial, received only a reprimand, he recovered £300 damages. In *Wall v. Macnamara*,<sup>3</sup> a case of aggravated treatment under a protracted confinement, indicating a specially evil *animus*, the plaintiff was awarded £1000.

As to the act of *preferring false and malicious charges*, or engaging in a malicious prosecution,—this, in Cobbett's case, was held to constitute a valid cause of action.<sup>4</sup> But charges against an officer or soldier, made to a superior, not maliciously and causelessly but in good faith and the discharge of an official duty, are *privileged communications* for which the preferring officer cannot be held legally amenable though the charges themselves be not finally sustained. It is not enough that they are not true; they must be wilfully untrue.<sup>5</sup>

So, a *complaint* against an officer, addressed to a competent superior, for the purpose of obtaining proper redress for a wrong done, constitutes no ground for a civil action. Thus where a creditor of an army officer made an application to the Secretary of War, with the view of enlisting his influence toward requiring the officer to pay his just debts, and stated therein facts derogatory to the officer, not however for the purpose of slandering him but of securing reparation, such complaint was held to be, not a libel, but a privileged communication.<sup>6</sup>

So of any *official report* made by an inferior to a superior officer, in which the acts of a third are injuriously reflected upon:—such a report, when made in good faith and in the execution of a duty, is held to be a *privileged communication* and one upon

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1. See *Warden v. Bailey*, 4 M. & S. 400. The mere fact that the party was *acquitted* does not show that the prosecution was without probable cause.

2. 2 C. & P. 148.

3. 1 Term, 536. And see *Swinton v. Molloy*, Id.

4. Proceedings upon charges by Wm. Cobbett against Capt. Powell and other officers of the 54th Foot—Opinion of Law Officers, London, 1809.

5. *Dickson v. Earl of Wilton*, 1 Fost. & Fin. 419; *Dickson v. Combermere*, 3 Id. 527; *Keighly v. Bell*, 4 Id. 763; *Mitchell v. Kerr, Rowe*, 537.

6. *Fairman v. Ives*, 5 Barn. & Ald. 642; *Rex v. Bayley*, Bac. Abr., "Libel," A., 2.



which an action for damages cannot be based.<sup>1</sup> On the other hand, in a case<sup>2</sup> where a statement in regard to the misconduct and incapacity of a master of a transport ship was made by an officer of the navy, not by a report addressed to the Government, but by an informal and unofficial publication, this mode of communication was held not privileged but ground for an action for libel. In the leading American case of *Maurice v. Worden*, where the Superintendent of the Naval Academy was sued for an alleged libel in officially reporting to the Navy Department the gross misconduct of a subordinate, and judgment was given for the defendant, it was held by the Supreme Court of Maryland<sup>3</sup> that such a communication was "privileged to the extent that the occasion of making it rebuts the presumption of malice, and throws upon the plaintiff the *onus* of proving that it was not made from duty but from actual malice and without reasonable and probable cause."

***Illegal punishment or unjustifiable violence.*** An action will not lie against an officer for an exercise of discipline severe in itself, provided it be sanctioned by military usage; otherwise where the severity is not thus sanctioned. Thus a naval commander was held not liable to damages for ordering a midshipman to the mast-head, this being a disciplinary punishment justified by the usage of the service.<sup>4</sup>

In several English cases, however, heavy damages have been awarded for illegal or excessive flogging inflicted upon inferiors by the command of superior officers.<sup>5</sup> In *Barwis v. Keppel*,<sup>6</sup>

1. *Dawkins v. Ld. Paulet*, 9 B. & S. 768, 5 Q. B. 94. And see *Home v. Ld. Bentinck*, 2 Brod. & Bing. 130; *Oliver v. Ld. Bentinck*, 3 Taunt. 456; *Beatson v. Skene*, 5 Hurl. & Norm. 837; *Gardner v. Anderson*, 22 Int. Rev. Rec. 41; XI Opins. At. Gen., 142; XV Id., 378, 415. It is scarcely necessary to add that, as held in the English cases, all evidence given before a court-martial or court of inquiry is "absolutely privileged." *Dawkins v. Ld. Rokeby*, 8 Q. B. 55; *Same v. Prince Edward of Saxe Weimar*, 1 Q. B. D. 499.

2. *Harwood v. Green*, 3 C. & P. 141—£50 damages awarded.

3. 54 Md. 257.

4. *Leonard v. Shields*, 1 McArthur, 159.

5. See the cases of Col. Bailey, Capt. Tonyn, and the officers of the Devon militia cited in the report of *Warden v. Bailey*, 4 Taunt. 70. See also *Grant v. Shard*, 4 Taunt. 84, where a superior, for striking an inferior officer and calling him a "stupid person" because he had failed to communicate an order as directed, was adjudged to pay £20 to the inferior.

6. 2 Wilson, 314.

where a regimental commander disapproved the sentence adjudged by a court-martial upon a sergeant as not being in his opinion sufficiently severe, and thereupon imposed a more severe one of his own, it was held that from such illegal act malice was to be presumed which would have rendered the defendant liable in damages, except that for another reason the court was without jurisdiction of the offence. In the most marked English case of this class, that of Joseph Wall, commandant of the garrison and governor of Goree, in Africa, this official, for causing the death of a sergeant by inflicting upon him summarily without trial, and without reasonable cause, eight hundred lashes, was, twenty years afterwards, brought to trial in England, sentenced to death and executed.<sup>1</sup>

In the American service, while officers of the army have not unfrequently been brought to trial *by court-martial* for inflicting illegal punishment, or using unnecessary violence toward inferiors,<sup>2</sup> the instances of civil suits based upon such causes of action have been rare. In the leading case of *Dinsman v. Wilkes*,<sup>3</sup> in which an officer of the navy was sued by a marine upon whom he had imposed a corporal punishment, it was held by the Supreme Court that where in such a case the officer, (as the defendant in this case was found to have done,) acts within his discretionary powers and without malice, he is not amenable to civil proceedings.<sup>4</sup> In a case of another naval officer alleged to have exceeded his disciplinary authority in assaulting and imprisoning a subordinate *at sea*, an action of trespass was held to be maintainable in a State Court.<sup>5</sup>

But, as heretofore indicated, civil courts are reluctant to entertain this class of questions, which, except in a clear case of

1. 28 Howell, S. T., 51. Compare the case cited by Samuel, (p. 272,) of Major McKenzie, convicted by a criminal court of homicide in causing a mutineer to be "blown from a gun."

2. See Vol. I, Chapter XX, p. 628—"Disciplinary Punishments."

3. 7 Howard, 89; 12 Id., 390.

4. Here may be noted the case of *Freer v. Marshall*, 4 Fost. & Fin., 485, in which a private sued his regimental commander for maliciously causing his discharge from the regiment. It was adjudged that he could not maintain his suit inasmuch as the commander had by law the power to discharge at discretion, and had here also reasonable ground for the action taken so that malice on his part could not be presumed.

5. *Wilson v. Mackenzie*, 7 Hill, 95.

legal liability, belong rather to the province of the military tribunal.

**Cause of action resulting from negligence.** Where, in the performance of duty, an officer or soldier, unintentionally but through negligence, does any considerable injury to another officer or soldier, or to his property, the latter has his action for damages against the former in the same manner as would a civilian. Thus where a soldier, on skirmish drill, so negligently discharged his musket as to wound another soldier, he was adjudged liable for damages in a suit instituted on account of the injury.<sup>1</sup>

**3. Amenability to Suits by Civilians—*Liability for abuse or excess of authority.*** While, as we have seen, a military officer, when exercising a discretionary authority, is not liable to an action at law on account of an error of judgment, he becomes clearly so liable where he exceeds or abuses his authority, and thus commits an illegal act, to the injury of a civilian.<sup>2</sup> And the absence of an intent to violate law cannot affect the question of liability, though it may be material to the question of the *quantum* of damages. The often-cited English cases of *Mostyn v. Fabrigas* and *Comyn v. Sabine*, and *Capt. Gambier's* and *Admiral Palliser's* cases, were early instances in which military or naval commanders were held liable in damages to civilians for personal injury or the seizure of private property, although the transcending of authority was apparently the result of zeal in the discharge of a supposed duty.<sup>3</sup> The later cases of *Cooke v.*

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1. *Weaver v. Ward*, Hobart, 134.

2. "For a malicious exercise by a military officer of lawful authority, or for acts of a military officer, (or court,) in excess of authority, though done in good faith, toward those in the military service, and *a fortiori* toward those who are not, where the civil laws are in full force, the person injured" may "obtain redress in the ordinary way against the wrong-doer." *Tyler v. Pomeroy*, 8 Allen, 485.

3. Cowper, 161-181. *Mostyn* and *Sabine* were military governors of Minorca and Gibraltar. The former was adjudged to pay £3000 to a native Minorquin whom he had imprisoned without due cause and banished from the island; the latter £500 for executing an illegal sentence of flogging against a civil employee. *Capt. Gambier* had £1000 damages awarded against him for exceeding his authority in pulling down the buildings of certain sutlers who sold liquor to the navy in Nova

Maxwell<sup>1</sup> and Glynn *v.* Houston<sup>2</sup> were of a similar character. An early and leading American case of the same class is that of Smith *v.* Shaw,<sup>3</sup> in which a military commander, who had caused to be arrested and held for trial by court-martial a civilian who was not in fact subject to the military jurisdiction, was adjudged to be amenable to damages for the tort. Here are also to be classed the suits instituted against military commanders, provost marshals, or other officers who during the late war made arrests with a view to trial by military commission, or executed the sentences of such commissions, in cases of persons held not to be subject to the jurisdiction of these tribunals.<sup>4</sup> A more recent case of damages awarded against an officer of our army who had acted in entire good faith though illegally, is that of Bates *v.* Clark,<sup>5</sup> in which a captain of infantry was adjudged a trespasser, for seizing liquor in a region supposed by him to be Indian country which was not so in fact. In another late case,—Waters *v.* Campbell,<sup>6</sup>—heretofore remarked upon, damages were recovered by a civilian against a captain of the army, who, when acting in good faith in the line of duty, had held the plaintiff in arrest for a longer period than was authorized by the existing statute law.

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Scotia. The representatives, however, of Admiral Boscawen, under whose orders he acted, assumed the defence of the suit and paid the damages adjudged. The cause of action against Admiral Palliser was the unauthorized destroying of fishing boats on the coast of Labrador. With these cases see Sutherland *v.* Murray, 1 Term, 538, in which a colonial judge of Minorca recovered £5000 damages against the military governor for improperly suspending him from office.

1. In this case the plaintiff, an American, recovered £1000 damages from Colonel Maxwell, Governor of Sierra Leone, who had seized his factory on the Congo, upon suspicion of its being used in the slave-trade. Stocqueler, Hist. Brit. Army, 190.

2. 2 Man. & Gr. 337. This was an action against the military governor of Gibraltar for a false arrest and imprisonment imposed upon a civilian who had been mistaken for another person. Damages £50.

3. 12 Johns. 257.

4. See Skeen *v.* Monkheimer, 21 Ind. 1; Griffin *v.* Wilcox, 27 Id. 391; Johnson *v.* Jones, 44 Ills. 142; *In re* Kemp, 16 Wis. 359; Milligan *v.* Hovey, 3 Bissell, 13. And see Bean *v.* Beckwith, 18 Wallace, 510, a case of a provost marshal who made an arrest in Vermont without adequate authority.

5. 95 U. S., 204.

6. 5 Sawyer, 22.

*Liability of inferior when acting under orders—Relative amenability of superior and inferior.* The material question has not unfrequently been raised as to how far an inferior officer or soldier, sued or prosecuted on account of an act done by him in his military capacity, may justify under an order given him by a military superior. Of course where the authority of the superior is complete it shields all who duly act under him.<sup>1</sup> An inferior in executing a valid authority or order is protected much as is a sheriff by his precept, and if he proceeds upon probable cause and without malice, will in general be justified though he commit error.<sup>2</sup> But where the order of the superior is *illegal*, how far, if at all, can it serve as a defence to the subordinate who, ignorant of its illegality, executes it in good faith? At *military* law, indeed, the inferior, bound as he is at his peril to obey all orders not palpably illegal upon their face, may, if brought to trial for an act committed in obedience to an order, apparently legal but illegal in fact, plead in defence his obligation to obey, and such defence will in general be accepted as a sufficient answer to the charge.<sup>3</sup> In some *civil* cases a similar view has been taken; the order of the superior when apparently regular and valid being held to protect the inferior because he was bound to obey it.<sup>4</sup> In some other civil cases the inferior is considered to be justified on the ground that he is, under the circumstances, acting under duress or a *quasi* compulsion, much as a wife is supposed to act by the compulsion of her husband.<sup>5</sup> But in the great majority of the adjudications it has been held that an order which is in fact illegal—which commands the doing of an act which is unlawful or legally unauthorized—can, however regular, proper, or just it may appear on its face, protect *no one* concerned in the performance; that the superior who gives it and causes its execution, and the inferior who actually executes

1. *Teagarden v. Graham*, 31 Ind. 422.

2. *Despan v. Olney*, 1 Curtis, 306; *Hawley v. Butler*, 54 Barb. 490; *Ruan v. Perry*, 3 Caines, 120.

3. DIGEST, 8-10, "Twenty-First Article."

4. See *Riggs v. State*, 3 Cold. 85; *Trammell v. Bassett*, 24 Ark. 499; *Taylor v. Jenkins*, Id. 337. These indeed were cases occurring in time of *war*, when the obligation of the inferior to obey is more imperative than in peace. See *Bates v. Clark*, 95 U. S., 204.

5. *McCall v. McDowell*, Deady, 233; *Witherspoon v. Woody*, 5 Cold. 149. But see *U. S. v. Greiner*, 4 Philad. 396.

it as ordered, will both, or either, be liable in damages as for a trespass to any person aggrieved.<sup>1</sup> That the illegal order may have proceeded from the highest authority of the government—may have been in fact given directly by the President as Commander-in-chief, cannot render it of any greater efficacy in protecting the subordinate who acts upon it.<sup>2</sup>

In this class of cases, however, the inferior, if he has acted in good faith, will ordinarily be charged with but slight or nominal damages.<sup>3</sup> On the other hand the superior, if sued, will, as the principal offender, be held to a stricter accountability<sup>4</sup> and made liable for all such acts of the inferior or inferiors of the command, by whom his orders were executed, as were within the scope of such orders.<sup>5</sup> A superior, however, cannot be made responsible for the personal negligence of a subordinate in executing an order,<sup>6</sup> or for acts done by the latter on his own responsibility.<sup>7</sup> If, indeed, he expressly ratifies the same by his own action, he will be liable.<sup>8</sup>

In justifying himself by the order of a superior, in a civil suit instituted against him, the inferior need not show that the order was a *written* one: a verbal order if explicit will be of equal

1. *Harmony v. Mitchell*, 1 Blatchford, 356; *Clay v. U. S.*, Devereux, 25; *Holmes v. Sheridan*, 1 Dillon, 351; *Bates v. Clark*, 95 U. S., 204; *U. S. v. Carr*, 1 Woods, 480; *Com. v. Blodgett*, 12 Met. 56; *U. S. v. Greiner*, 4 Philad. 396; *Skeen v. Monkheimer*, 21 Ind. 4; *Griffin v. Wilcox*, 27 Id. 391; *State v. Sparks*, 27 Texas, 632; *Koonce v. Davis*, 72 No. Ca. 218. So, at criminal law, a shooting without sufficient cause, (as for disrespectful words merely,) by one soldier of another, resulting in the death of the latter, at the order of an officer, is "murder both in the officer and the soldier." *U. S. v. Carr*, 1 Woods, 480.

2. *Little v. Barreme*, 2 Cranch, 179; *U. S. v. Buchanan*, 8 Howard, 105; *Eifort v. Bevins*, 1 Bush, 460; *Richardson v. Crandall*, 47 Barb. 335; *Griffin v. Wilcox*, 27 Ind. 391; *Cooley*, Prins. Const. Law, 119, 157.

3. *State v. Sparks*, 27 Texas, 632. It is otherwise, however, in a criminal case. Thus where a soldier fires and takes life in obedience to an unlawful order, the homicide is not reduced to manslaughter but is murder. *U. S. v. Carr*, 1 Woods, 480.

4. *Trammell v. Bassett*, 24 Ark. 499; *State v. Sparks*, 27 Texas, 617.

5. *Ela v. Smith*, 5 Gray, 122; *Taylor v. Jenkins*, 24 Ark. 337.

6. See *Regina v. Hutchinson*, 9 Cox, 555; *State v. Sutton*, 10 R. I. 159—cases of homicide caused by negligence on the part of subordinates in executing orders.

7. *Nicholson v. Mounsey*, 15 East, 383.

8. *Smith v. Shaw*, 12 Johns. 257.

effect.<sup>1</sup> Nor need he exhibit the commission of his superior or prove his appointment as such: it will be sufficient to show that the superior publicly acted and was recognized in the capacity ascribed.<sup>2</sup>

*Liability for mode of executing an order.* An order may be legal, but its mode of execution the reverse. Thus, in the case of an arrest, only the proper degree of force should be employed; otherwise the officer or soldier executing it becomes civilly amenable.<sup>3</sup> So an unduly severe or inappropriate confinement may, of itself or with other circumstances, constitute ground of action. Thus a civil prisoner is not in general to be subjected to the same restraint or exactions as a soldier,<sup>4</sup> nor a political prisoner to the same as a criminal.<sup>5</sup> So, holding a prisoner confined for an unreasonable or illegal period will render the responsible official liable to suit.<sup>6</sup>

*Measure of damages.* Upon this point, already noticed, it need only be added that where, in a suit by a civilian against an officer or soldier, damages are awarded to the plaintiff, the *quantum* of the same will depend mainly upon the *animus* of the defendant as developed by the testimony.<sup>7</sup> Where it appears that, though under a mistake as to the law or facts of the case, he acted in the honest discharge of what he reasonably believed to be his duty, the damages should in general be no more than compensatory, *i. e.* enough to cover the actual loss or injury to the plaintiff.

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1. Pollard *v.* Baldwin, 22 Iowa, 328.

2. Rex *v.* Gardner, 2 Camp. 513; Lebanon *v.* Heath, 47 N. H. 359. Hardage *v.* Coffman, 24 Ark. 256. "This rule of evidence applies "with more force to military than to civil officers. Soldiers in many cases are placed under the command of officers of whom they know nothing; they are continually being changed from one command to another; and should they be required to produce the commissions of their commanding officers, or even to prove that they had ever been commissioned, they could rarely indeed sustain a plea of justification for any act done in obedience to orders." Jones *v.* Johnson, 24 Ark. 260.

3. McCall *v.* McDowell, Deady, 233.

4. Waters *v.* Campbell, 5 Sawyer, 17, *ante*.

5. McCall *v.* McDowell, *ante*.

6. Hawley *v.* Butler, 48 Barb. 10; *In re Carr*, 3 Sawyer, 316; Waters *v.* Campbell, *ante*.

7. Wall *v.* McNamara, 1 Term, 537.

Where it is shown that the defendant acted maliciously, *i. e.* with an intent to injure or other malevolent motive, or wantonly, the damages may properly be exemplary or punitive.<sup>1</sup> Courts will indeed set aside verdicts awarding excessive damages. Thus, in the early case of *McConnell v. Hampton*,<sup>2</sup> (1815,) where the jury awarded \$9000 as damages to a civilian, against a military commander by whom he had been unjustifiably arrested, confined, and brought to trial by court-martial, for alleged giving information to the enemy, &c., the court set aside the verdict as unreasonable and excessive. In the more recent case of *Waters v. Campbell*,<sup>3</sup> referred to under a previous head, it was ruled by the court that the damages given, \$3500, were excessive, and that there must be a new trial on this ground unless the plaintiff consented to a reduction of the same to \$2000, which he thereupon did.

The relative proportion of damages properly adjudged where a superior who issued an order, (held to be illegal or unauthorized,) and an inferior who executed it, are sued together, has been indicated above.

***Liability for injuries in time of war.*** For an act done *jure belli*, or for the exercise of a belligerent right, an officer or soldier cannot be called to account in a civil proceeding.<sup>4</sup> Thus an officer is not liable to a suit for the seizure or destruction, in an adequate emergency of war, of the private property of individual citizens.<sup>5</sup> So it has been held that a soldier was not liable to prosecution for shooting and killing, under proper orders, a "bushwhacker" or guerilla, in the late war, in Tennessee.<sup>6</sup> The

1. *Walker v. Crane*, 13 Blatchford, 1; *Milligan v. Hovey*, 3 Bissell, 14; *McCall v. McDowell*, Deady, 233; *Holmes v. Sheridan*, 1 Dillon, 351; *Bates v. Clark*, 95 U. S., 209.

2. 12 Johns. 234.

3. 5 Sawyer, 22.

4. *Com. v. Dolland*, 1 Duvall, 182; *Doyle v. Armstrong*, 2 Id. 533; *Price v. Poynter*, 1 Bush, 387; *Bell v. L. & N. R. R. Co.*, Id. 404; *Safford v. Mercer*, 42 Ga. 556; *Ford v. Surget*, 46 Miss. 130; *Coolidge v. Guthrie*, 8 Am. L. Reg. (N. S.) 22; 1 Opins. At. Gen., 255. The common law will not "undertake to rejudge acts done *flagrante bello* in the face of the enemy." *Tyler v. Pomeroy*, 8 Allen, 484.

5. *Harmony v. Mitchell*, 1 Blatchford, 549; *Do.*, 13 Howard, 115; *Holmes v. Sheridan*, 1 Dillon, 351; *Yost v. Stout*, 4 Cold. 205; *Thomasson v. Glisson*, 4 Heisk. 615; *Drehman v. Stifel*, 41 Mo. 184; *Bryan v. Walker*, 64 No. Ca. 141; *Koonce v. Davis*, 72 Id. 218.

6. *Ex parte Hurst*, 2 Flippin, 510.



existence, however, of war will not,—as heretofore indicated under PART II—justify wanton trespasses upon the persons or property of civilians, or other injuries not sanctioned by the laws or usages of war;<sup>1</sup> nor will it justify wrongs done by irresponsible unauthorized parties.<sup>2</sup> For such acts the offending officer or soldier may be made liable in damages. But in general, in time of war, a greater discretion is conceded to commanders, and to military persons executing orders.<sup>3</sup> Obligated as they are to act promptly upon emergencies,<sup>4</sup> it would not be fair to hold them to the same strict accountability before the courts as for acts in disregard of private right in time of peace.

**Liability on public contracts.** An action will not lie against an officer of the army on a contract made by him for the United States in an official capacity.<sup>5</sup> He is not personally bound upon such a contract, but the United States only, and recourse can be had thereon to the United States alone; a suit in the Court of Claims being the usual form of proceeding. Nor can an officer be sued upon a contract of the Government which it is simply his part to execute. Thus a paymaster whose business it is to pay certain troops or employees cannot be sued by an individual for his pay or wages.<sup>6</sup> An officer is liable to an individual who is a party to or is interested in a public contract, only where he has acted without authority or exceeded his authority under

1. *Hough v. Hoodless*, 35 Ill. 166; *Christian Co. Ct. v. Rankin*, 2 Duv. 502; *Terrill v. Rankin*, 2 Bush, 453; *Lewis v. McGuire*, 3 Id. 202; *Dills v. Hatcher*, 6 Id. 606; *Riggs v. State*, 3 Cold. 85; *Merritt v. Mayor*, 5 Id. 95; *Bowles v. Lewis*, 48 Mo. 32; *Williamson v. Russell*, 49 Id. 185.

2. *Worthy v. Kinamon*, 44 Ga. 297; *Hogue v. Penn*, 3 Bush, 663; *Bramer v. Felkner*, 1 Heisk. 228; *Cochran v. Tucker*, 3 Cold. 186.

3. *Sutton v. Johnstone*, 1 Term, 493; *Wall v. McNamara*, Id. 536; *Olmsted's Case*, Brightly, 9; *Hefferman v. Porter*, 6 Cold. 391.

4. In war, "military commanders must act to a great extent upon appearances. As a rule they have but little time to take and consider testimony, before deciding." *U. S. v. Diekelman*, 92 U. S., 527.

5. *Macbeath v. Haldimand*, 1 Term, 172; *Rice v. Chute*, 1 East, 579; *Crowell v. Crispin*, 4 Daly, 100.

That even U. S. Courts will not enjoin executive officers of the government from performing public contracts, see 1 Opins. At. Gen., 681; II Id., 178; III Id., 667. [State Courts of course cannot do so. XV. Id., 524; XVI Id., 257; DIGEST, 163.]

6. See *Carter v. Hall*, Starkie, 361, in which it was held that a pursuer's steward could not recover his pay by a suit against the pursuer.

or in regard to the same, thus making himself personally responsible:<sup>1</sup> here, as in other cases of tortious acts of public officers, the government cannot be made liable, but resort must be had by proceedings against the officer.\*

***Liability of officer as garnishee.*** Nor can an officer of the army, (or other public officer,) be sued as garnishee or trustee, for or on account of public money in his official possession. Money in the hands of a disbursing officer remains public funds till actually paid over to the person or persons entitled to receive it as due them. To allow it to be attached would be to divert the moneys of the United States from the specific purposes for which they have been appropriated by Act of Congress, and, while a violation of law, would also seriously embarrass, and so far suspend, the operations of the Government. A government cannot properly be placed in the position of a stakeholder between the parties to whom it owes money and their assignees or creditors. Thus, upon a principle of public policy as well as law, proceedings against public officers by way of garnishment, trustee process, or foreign attachment, as the form is variously designated, are not legitimate and will not be sustained by the courts.<sup>3</sup>

***Liability under writ of habeas corpus—Form of return.*** Military officers are not unfrequently made respondents in civil proceedings by the service upon them of writs of *habeas corpus*, sued out by or in behalf of enlisted men or military prisoners claiming to be discharged from the military service or from military custody, on the ground of illegal enlistment or absence of jurisdiction or authority over them on the part of the military authorities. State courts, as it was finally adjudged and settled, in 1871, by the Supreme Court of the United States,<sup>4</sup> have no

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• 1. *Richardson v. Crandall*, 47 Barb. 335; *Crowell v. Crispin*, 4 Daly, 100; 11 Opins. At. Gen., 661.

2. *Johnson v. U. S.*, 2 Ct. Cl. 391; XII Opins. At. Gen., 397.

As to the effect of the statutes regulating the making and execution of contracts for the army, the authority of officers concerned in the same, &c., see DIGEST, 180-197, Title—"Contract."

3. *Buchanan v. Alexander*, 4 Howard, 20. And see *Averill v. Tucker*, 2 Cranch, C. C., 544; *Derr v. Lubey*, 1 McArthur, 187; 1 Opins. At. Gen., 604; III Id., 605, 718; V Id., 560, 759; X Id., 120; XIII Id., 566; DIGEST, 160-1.

4. *Tarble's Case*, 13 Wallace, 397—affirmed in the recent case of *Robb*

power whatever to discharge such persons when duly held by the authority of the United States. Should any State or municipal tribunal issue the writ in such a case, while the officer in charge of the petitioner and upon whom service is made is not, strictly, required to make any return or response to the same, he will yet, as a matter of comity, always properly do so, so far as to advise the court that he holds the petitioner by the authority of the United States, as an enlisted soldier, military convict, &c.,—setting forth in brief the status of the individual. He will decline, however, in respectful terms to produce the body of the petitioner before the court, on the ground stated of its want of jurisdiction over the subject-matter.<sup>1</sup> On the return day of the writ, he will properly appear and present his return, whereupon the court will in general as a matter of course dismiss the proceeding. Should the State court assume jurisdiction and commit the officer for contempt, he will forthwith sue out a writ of *habeas corpus* for his own release in the U. S. Circuit or District Court. If the State authorities attempt to take the soldier from military custody, they should be prevented by the use of such military force as may be necessary for the purpose.

Where, on the other hand, an officer of the army is served with a writ of *habeas corpus* issuing from a court of the *United States*, he will make full return to the same, setting forth all the facts of the case and the authority under which the petitioner is held, and on the return day will appear with the body of the petitioner before the court to abide by its order thereupon.<sup>2</sup>

*Defence and indemnification by the government of officer sued, &c.* As has been already remarked, an action will not in general properly lie against a public officer in his representative capacity,<sup>3</sup> and where he is sued *in such capacity*, or as a *nominal defendant* in a case in which the United States is the party in interest, it will properly devolve upon the Govern-

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*v. Connolly*, 111 U. S., 632-634. And see *In re Robb*, 9 Sawyer, 582-588. The case of *Tarble* is cited in full in DIGEST, 280-282, and note.

1. See par. 850, Army Regulations; XIII Opins. At. Gen., 451.

2. See forms of return in Appendix.

3. VI Opins. At. Gen., 7, referring to a replevin suit commenced against a public officer for property as in his possession where the possession was in fact that of the United States.

ment to assume the defence of the case and bear the expenses of the proceeding.<sup>1</sup>

Where a public officer is sued on account of an alleged wrong or injury committed in the discharge of his official duty, the general rule is that he must provide for his own defence,<sup>2</sup> the question of indemnification for his expenses, or for damages recovered against him, being left to be determined by the law and facts as developed in the investigation.

Where military persons have been or are about to be sued or prosecuted on account of acts done in the performance of their duties, their proper course, if believing and desiring that their defence should be assumed by the United States, is to apply for counsel, (reporting the facts,) as prescribed by par. 845 of the Army Regulations, to the Secretary of War, who, if deeming the application reasonable, will, under the existing law, refer the question, whether counsel can legally or properly be employed in the case by the United States, to the Department of Justice. Upon the Attorney General as the head of that Department, on its establishment by the Act of June 22, 1870, c. 150,<sup>3</sup> was exclusively devolved the authority to provide for the defence of public officers in civil proceedings. Whether he will decide to do so in any particular case will in general mainly be determined by the amount of '*interest*,' pecuniary or otherwise, which the United States may have in the case or the questions involved therein,<sup>4</sup> considerations of justice to the individual being also taken into account.<sup>5</sup>

1. V Opins. At. Gen., 397.

2. V Opins. At. Gen., 397; VI Id., 77, 220.

3. See s. 17 of that Act, as incorporated in Secs. 189, 366, Rev. Sts.

4. See Secs. 361, 363, 364, 366, 367, Rev. Sts.; DIGEST, 396-7. And compare VI Opins. At. Gen., 77. The question will also be practically affected by the state of the *appropriation* available for the purpose.

5. Attorney General Black, in IX Opins. At. Gen., 52, observes as follows:—"When an officer of the United States is sued for doing what he was required to do by law, or by the special orders of the Government, he ought to be defended by the Government. This is required by the plain principles of justice as well as by sound policy." It has therefore "been the uniform practice of the Federal Government, ever since its foundation, to take upon itself the defence of its officers who are sued or prosecuted for executing its laws." And he cites many instances of such practice. He further holds, (p. 53,) that where such an officer carries on his own defence without appealing to the government pending the cause, he has a just claim for the sum that he may be "out

For indemnification for any damages other than nominal that he may be required to pay, as also for the expenses of his defence where not assumed by the United States, the officer will in general have no recourse except to Congress.<sup>1</sup> That body has from time to time passed special Acts for the relief of officers of the army or navy, who have been subjected to pecuniary losses on account of suits for acts done in the honest discharge of duty.<sup>2</sup>

### **Amenability to Criminal Prosecution in State Courts.**

Except where the act was committed upon a reservation or other premises within the exclusive jurisdiction of the United States, an officer or soldier is liable, for a criminal offence against the local law, to prosecution in the courts of the State or Territory, in the same manner as is a civilian. His being in the military service of the United States affects in no degree his amenability to such prosecution; nor is it affected by the fact that he was at the time of the offence engaged in the performance of military duty, if in such performance he exceeded his authority or was culpably negligent.<sup>3</sup>

The principal occasions and acts upon or for which a military person may render himself liable to indictment in the local criminal courts have already been noticed in Chapter XXV, of PART I, (in reviewing the separate Articles of war,) and elsewhere, and need not be repeated. Prosecutions of officers and soldiers for crimes in State courts are not indeed of frequent occurrence. Even in time of peace, when the criminal jurisdiction of military

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of pocket," though he is "not to be allowed any unreasonable or extravagant expenses." And see XII Id., 368.

1. See VI Opins. At. Gen., 77; XIV Id., 71.

2. Thus, by the Act of Feb. 11, 1880, the Secretary of the Treasury is directed to pay to Capt. J. B. Campbell, U. S. A., the amount of the judgment and costs in the case of *Waters v. Campbell*, (U. S. Circuit Ct., 5 Sawyer, 17, hereinbefore referred to,) "said judgment"—it is added—"having been obtained against him, and costs incurred by him, while acting in the line of his duty as Captain, &c."

Later, by the Act of August 5, 1882, c. 390, making appropriations for the Navy Department, &c., the sum of seven hundred and fifty dollars was appropriated "for legal expenses incurred by Rear Admiral John L. Worden, in defending the suit of Bernard Maurice against him for alleged damages caused by the official acts of said Admiral Worden in the discharge of his duty while Superintendent of the Naval Academy in 1872."

3. See military cases referred to in Vol. I, p. 967—"Manslaughter."

tribunals is comparatively limited, much the greater part of the criminal offences committed within the army are cognizable and are disposed of by general courts-martial, under Art. 62 or otherwise.

### III. OTHER CIVIL RELATIONS OF THE MILITARY.

**Effect in General of the Military Status.** Not only in time of war, but frequently also in time of peace, the officers and soldiers of the army are so isolated by the exigencies and obligations of the military service that they are not in a position to exercise the common rights of the citizen and do not become subject to his burdens.

**Restriction of Civil Rights by U. S. Statute.** They are also debarred from exercising certain of such rights by express legislation of Congress. Thus, by Sec. 1222, Rev. Sts., officers of the army on the active list are precluded from holding "*any civil office.*"<sup>1</sup> By Sec. 1223, all officers of the army, whether active or retired, are specially precluded from holding diplomatic or consular office. By Sec. 1860, as amended by the Act of March 3, 1883, all military persons, except retired officers, are prohibited from holding civil offices in Territories. By the same Section it is declared that no military person "*shall be allowed to vote in any Territory by reason of being on service therein, unless such Territory is, and has been for six months, his permanent domicile.*" And by Secs. 1996, 1998, Rev. Sts., *deserters* are placed under a disability to hold office under the United States, or exercise other rights of citizenship.<sup>2</sup>

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1. As to the construction and effect of this statute, see, in full, DIGEST, 157-160, tit. "Civil Office;" also Opin. of At. Gen., of May 9, 1884, as to the acceptance, by an engineer officer of the army, of a certain municipal office in Philadelphia. Exceptions from the operation of the Section can of course be authorized only by Congress. See an instance of such an exception, in a case of an engineer officer, authorized by Joint Res. of Feb. 28, 1883. The Act of June 11, 1878, requiring that one of the three Commissioners, who constitute the local government of the District of Columbia, shall be an officer of the Engineer Corps of the Army, has engrafted a permanent exception upon the original statute.

2. That proof of a *conviction* of desertion is necessary to debar a deserter from exercising the right of suffrage, see *ante*, Vol. I, p. 925-6.

**Restriction by State Laws.** So, the constitutions or laws of some of the States disqualify military officers in whole or in part from *holding office* under the State;<sup>1</sup> or restrict their right to *vote* by declaring in effect that they shall not gain a residence or habitation, for that purpose, merely by being stationed therein. In the absence of such provisions, a *retired* officer or soldier may hold such office; and *any* officer or soldier may vote if only he has resided in, or inhabited, the State, county, &c., for the requisite period. The fact that he is in the military service does not disqualify a person from obtaining a residence;<sup>2</sup> but being, while on the active list, always subject to orders as to the period of his stay at any post or station, he cannot in general exercise the volition or entertain the intention necessary to the selection and acquisition of a legal residence.<sup>3</sup> By the laws, however, of some of the States a mere *habitaney* for a certain period is all that is necessary to entitle the person to exercise the right of suffrage.

**Liability to Taxation.** An officer or soldier of the army is of course liable to be taxed for such *real estate* as he may possess, in the State, &c., in which it may be situate. As to *personal property*, he is in general liable to be taxed therefor whenever his habitation is apart from a military post. It is not essential that he should have a permanent residence to subject him to local taxation, personal property taxes being legally imposable upon mere inhabitants, or upon property held at the place irrespective of the *status* of the owner.

Whether an officer, &c., stationed at a military post is legally liable to be taxed for his personalty, will depend upon the question whether the State is empowered to exercise jurisdiction over the locality.<sup>4</sup>

**Exception.** But in no event can a State or municipality legally tax the pay or allowances of an officer or soldier of the army, or the arms, uniform, equipments, horses, &c., incident to

1. See Const. of Illinois, Art. IV § 3; Const. of Indiana, Art. 2 § 9; Rev. Sts., New York, Ch. V, Tit. II § 5.

2. Wood v. Fitzgerald, 3 Or. 568; Hunt v. Richards, 4 Kans. 549; G. O. 13, First Mil. Dist., 1868.

3. Graham v. Com., 51 Pa. St., 258; Tayloe v. Reading, 4 Brewst., 439.

4. See *post*. As to the liability to taxation of soldiers stationed at West Point, see XIV Opins. At. Gen., 299. And see *Id.*, 27, as to the similar liability of a Superintendent of a National Cemetery.

his rank and office, or required or intended to be employed by him in the military service. This, upon the fundamental principle that no lesser sovereignty or authority can restrict or interfere with the means or instruments by or through which the Government of the United States is administered. "The authorities of a State," as the law is declared by Atty. Gen. Black,<sup>1</sup> "cannot impose a tax upon the salary of a federal officer, or upon the compensation paid by the United States to any person engaged in their service." Or, as it is held by the Supreme Court,— "Taxation by a State cannot act upon the instruments, emoluments, &c., which the United States may use and employ as necessary and proper means to execute their sovereign powers."<sup>2</sup>

**Effect of being stationed at a place over which the United States exercises exclusive jurisdiction.** Where exclusive jurisdiction over a military reservation or post situated within a State is vested in the United States, either by its having expressly reserved the same upon the admission of the State, or by means of the subsequent cession of its own jurisdiction by the State, (or—what is equivalent—the consent of the State to the purchase of the land by the United States,<sup>3</sup>) the persons stationed or commorant upon the premises become isolated, both territorially and as respects their civil relations. In a political sense, the land is no longer a part of the soil of the State nor are the occupants inhabitants of the State. They are severed from the enjoyment of the rights, and from subjection to the liabilities, of the citizens of the State as entirely as if they were residents of a foreign country. They have no more right to vote in the State, to send their children to the public schools, to use the public libraries, to be protected by the police or fire department, &c., than have the citizens of another State. On the other hand, they cannot legally be taxed by the State or municipality for their personal property held on the premises, or be required to per-

1. IX Opins., 477.

2. *Dobbins v. Comrs. of Erie Co.*, 16 Peters, 435. And see *Savings Bk. v. Coite*, 6 Wallace, 605; VII Opins. At. Gen., 578; *Opin. of At. Gen. Hoar*, of April 7, 1870; *Cooley, Const. Lims.*, 600-1; *DIGEST*, 472-3.

3. That the mere fact that the United States is owner of the land, or the fact that the same has been duly reserved for military purposes, does not invest the United States with exclusive jurisdiction over it, has been repeatedly held. See *U. S. v. Stahl*, 1 Woolworth, 192; *Do. McCahon*, 206; *Ex parte Sloan*, 4 Sawyer, 331; *Clay v. State*, 4 Kans. 49; *U. S. v. Penn.*, 4 Hughes, 491.



form militia duty, or to serve on juries, or to furnish labor on the roads, &c., in the State, nor are they subject to the civil or criminal process of the local courts except in so far as the right to execute the same may have been reserved to the State.<sup>1</sup> This is the status not only of the officers and soldiers stationed at the post but of the civil employees and persons permitted to reside upon the reservation.<sup>2</sup>

***Otherwise within a Territory.*** This peculiar status, however—it need hardly be added—cannot exist where the region in which the post or reservation is situated is still a Territory. The authority of the civil officials of a Territory emanates, either immediately or mediately, from Congress; and, in the absence of any provision in the legislation of Congress relating to the organization and government of a Territory, (or in the general statute law,) by which officers or soldiers of the army stationed therein are specially exempted from the jurisdiction of the Territorial courts or authorities, they will be amenable thereto in the same manner and to the same extent as civilians,<sup>3</sup> except in so far as their liability may be affected by an existing state of war.

1. The State, in ceding its jurisdiction, generally reserves the right to execute *within* the reservation process issued by its courts on account of criminal offences committed or causes of action initiated *without* the same,—in order that the place may not serve as an asylum for criminals, debtors, &c.

2. On the general subject of this exclusive jurisdiction—how it is acquired and what is its effect—see, in addition to the authorities cited in note 3, page 146, the following: *U. S. v. Cornell*, 2 Mason, 60; *U. S. v. Davis*, 5 Id. 356; *U. S. v. Travers*, 2 Wheeler, C. C., 490; *U. S. v. Tierney*, 1 Bond, 571; *Eliot v. Van Voorst*, 3 Wallace, Jr., 299; *Com. v. Clary*, 8 Mass. 72; *Mitchell v. Tibbetts*, 17 Pick. 298; *Opinion of Justices*, 1 Met. 580; *State v. Dimick*, 12 N. H. 194; *People v. Godfrey*, 17 Johns. 225; *People v. Lane*, Edmonds, 116; *Com. v. Young*, Bright. 302; *Sinks v. Reese*, 19 Ohio St., 306; *In re O'Connor*, 37 Wis. 379; *Painter v. Ives*, 4 Neb. 122; 2 Story Const. § 1225, 1227; 1 Kent, Com., 403-4; 1 Hall, Jour. of Jur., 53; VI Opins. At. Gen., 577; VII Id., 628; VIII Id., 30, 102, 387, 418; XIV Id., 33, 199; XVI Id., 468; G. O. 8, Dept. of Texas, 1884; also the recent case of *Fort Leavenworth R. R. Co. v. Lowe*, 114 U. S., 525.

3. See DIGEST, 162; also G. O. 30 of 1878, publishing an opinion of Judge Advocate General Dunn, approved by the Secretary of War, to the effect that a Territorial Justice of the Peace may exercise jurisdiction in cases of military persons stationed on a military reservation in the Territory. An opinion *contra*, of Hoyt J., of the District Court of Washington Territory, published in Circular No. 21, Dept. of the Columbia, 1885, is deemed to proceed upon a misconception of the legal status and powers of officials of Territories and not to be sound law.



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## I.

## ORDINANCE OF RICHARD I—A. D. 1190.

["Chiefly meant to prevent disputes between the soldiers and sailors, in their voyage to the holy land." Grose, *Hist. Eng. Army*, vol. 2, p. 63.]

"Richard, by the grace of God, King of England, Duke of Normandy and Aquitaine, and Earl of Anjou, to all his subjects about to proceed by sea to Jerusalem, greeting. Know ye, that we, with the common consent of fit and proper men, have made the enactments under-written. Whoever shall slay a man on ship-board, he shall be bound to the dead man and thrown into the sea. If he shall slay him on land, he shall be bound to the dead man and buried in the earth. If any one shall be convicted, by means of lawful witnesses, of having drawn out a knife with which to strike another, or shall strike another so as to draw blood, he shall lose his hand. If, also, he shall give a blow with his hand, without shedding blood, he shall be plunged in the sea three times. If any man shall utter disgraceful language or abuse, or shall curse his companion, he shall pay him an ounce of silver for every time he has so abused him. A robber who shall be convicted of theft shall have his head cropped after the manner of a champion,\* and boiling pitch shall be poured thereon, and then the feathers of a cushion shall be shaken out upon him, so that he may be known, and at the first land at which the ships shall touch, he shall be set on shore. Witness myself, at Chinon."

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\* Champions hired to fight legal duels, in cases of murder and homicide, had their hair clipped close to their heads. (Note by Samuel.)

## II.

## ARTICLES OF WAR OF RICHARD II—A. D. 1385.

These are the Statutes, Ordonnances, and Customs, to be observed in the Army, ordained and made by good consultation and deliberation of our most Excellent Lord the King Richard, John Duke of Lancaster, Seneschall of England, Thomas Earl of Essex and Buckingham, Constable of England, and Thomas de Mowbray, Earl of Nottingham, Mareschall of England, and other Lords, Earls, Barons, Banneretts, and experienced Knights, whom they have thought proper to call unto them; then being at Durham the 17th Day of the Month of July, in the ninth Year of the Reign of our Lord the King Richard II.

I. FIRSTLY. That all manner of persons, of what nation, state, or condition they may be, shall be obedient to our lord the King, to his constable and mareschall, under penalty of everything they can forfeit in body and goods.

II. ITEM, that none be so hardy as to touch the body of our lord, nor the vessel in which it is contained, under pain of being drawn, hanged, and beheaded.

III. ITEM, that none be so hardy as to rob and pillage the church, nor to destroy any man belonging to holy church, religious or otherwise, nor any woman, nor to take them prisoners, if not bearing arms; nor to force any woman, upon pain of being hanged.

IV. ITEM, that no one be so hardy to go before, or otherwise than in the battail to which he belongs, under the banner or pennon of his lord or master, except the herbergers, whose names shall be given in by their lords or masters to our constable and mareschall, upon pain of losing their horses.

V. ITEM, that no one take quarters, otherwise than by the assignment of the constable and mareschall and the herbergers; and that, after the quarters are assigned and delivered, let no one be so hardy as to remove himself, or quit his quarters, on any account whatsoever, under pain of forfeiture of horse and armour, and his body to be in arrest, and at the King's will.

VI. ITEM, that every one be obedient to his captain, and perform watch and ward, forrage, and all other things belonging to his duty, under penalty of losing his horse and armour, and his body being in arrest to the mareschall, till he shall have made his peace with his lord or master, according to the award of the court.

VII. ITEM, that no one be so hardy as to rob or pillage another of money, victuals, provisions, forage, or any other thing, on pain of losing his head; nor shall any one take any victuals, merchandise, or any other

thing whatsoever, brought for the refreshment of the army, under the same penalty; and any one who shall give the names of such robbers and pillagers to the constable and mareschall, shall have twenty nobles for his labor.

VIII. ITEM, no one shall make a riot or contention in the army for debate of arms, prisoners, lodgings, or any other thing whatsoever, nor cause any party or assembly of persons, under pain (the principals as well as the parties) of losing their horses and armour, and having their bodies in arrest at the King's will, and if it be a boy or page he shall lose his left ear. Any person conceiving himself aggrieved shall make known his grievance to the constable and mareschall, and right shall be done him.

IX. ITEM, that no one be so hardy as to make a contention or debate in the army on account of any grudge respecting time past, or for any thing to come; if in such contest or debate any one shall be slain, those who were the occasion shall be hanged; and if any one shall proclaim his own name, or that of his lord or master, so as to cause a rising of the people, whereby an affray might happen in the army, he who made the proclamation shall be drawn and hanged.

X. ITEM, that no one be so hardy as to cry "havok,"<sup>1</sup> under pain of losing his head, and that he or they that shall be the beginners of the said cry shall likewise be beheaded, and their bodies afterwards be hanged up by the arms.

XI. ITEM, that no one make the cry called mounté,<sup>2</sup> or any other whatsoever in the army, on account of the great danger that may thereby happen to the whole army; which God forbid! and that on pain, if he be a man at arms, or archer on horseback, of losing his best horse; and if he be an archer on foot or boy, he shall have his left ear cut off.

XII. ITEM, if in any engagement whatsoever an enemy shall be beat down to the earth, and he who shall have thus thrown him down shall go forwards in the pursuit, and any other shall come afterwards, and shall take the faith or parole of the said enemy, he shall have half of the said prisoner, and he who overthrew him the other half; but he who received his parole shall have the keeping of him, giving security to his partner.

XIII. ITEM, if any one takes a prisoner, and another shall join him, demanding a part, threatening that otherwise he will kill him (the prisoner), he shall have no part, although the share be granted to him; and if he kills the said prisoner he shall be in arrest to the mareschall

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1. "*Havok*" was the word given as a signal for the troops to disperse and pillage. [Note by Grose.]

2. "*Mounté*," i. e. *montez*—to horse. Probably this was either a mutinous cry, calling on the cavalry to take horse and leave the army, or might be the method of calling to arms from a supposed approach of the enemy, and was what would now be called raising a false alarm. [Note by Grose.]

without being delivered till he has satisfied the party, and his horses and armour shall be forfeited to the constable.

XIV. ITEM, that no man go out on an expedition by night or by day, unless with the knowledge and by the permission of the chieftain of the battail in which he is, so that they may be able to succour him should occasion require it, on pain of losing horse and armour.

XV. ITEM, that for no news or affray whatsoever that may happen in the army, any one shall put himself in disarray in his battail, whether on an excursion or in quarters, unless by assignement of his chieftain, under pain of losing horse and armour.

XVI. ITEM, that every one pay to his lord or master the third of all manner of gains of arms; herein are included those who do not receive pay, but only have the benefit of quarters, under the banner or pennon of arms of a captain.

XVII. ITEM, that no one be so hardy as to raise a banner or pennon of St. George, or any other, to draw together the people out of the army, to go to any place whatsoever, under pain, that those who thus make themselves captains shall be drawn and hanged, and those who follow them be beheaded, and all their goods and heritages forfeited to the King.

XVIII. ITEM, that every man of what estate, condition, or nation he may be, so that he be of our party, shall bear a large sign of the arms of St. George before, and another behind, upon peril that if he be hurt or slain in default thereof, he who shall hurt or slay him shall suffer no penalty for it; and that no enemy shall bear the said sign of St. George, unless he be a prisoner, upon pain of death.

XIX. ITEM, if any one shall take a prisoner, as soon as he comes to the army, he shall bring him to his captain or master, on pain of losing his part to his said captain or master; and that his said captain or master shall bring him to our lord the King, constable or mareschall, as soon as he well can, without taking him elsewhere, in order that they may examine him concerning news and intelligence of the enemy, under pain of losing his third to him who may first make it known to the constable or mareschall; and that every one shall guard, or cause to be guarded by his soldiers, his said prisoner, that he may not ride about at large in the army, nor shall suffer him to be at large in his quarters, without having a guard over him, lest he espy the secrets of the army, under pain of losing his said prisoner; reserving to his said lord the third of the whole, if there is not a partner in the offence; and the second part to him that shall first take him; and the third part to the constable. On the like pain, and also of his body being in arrest, and at the king's will, he shall not suffer his said prisoner to go out of the army for his ransome, nor for any other cause, without leave of the King, constable, and mareschall, or the commander of the battalion in which he is.

XX. ITEM, that every one shall well and duly perform his watch in the army, and with the number of men at arms and archers as is as-



signed him, and that he shall remain the full limited term, unless by the order or permission of him before whom the watch is made, on pain of having his head cut off.

XXI. ITEM, that no one shall give passports or safe conduct to a prisoner nor any other, nor leave to any enemy to come into the army, on pain of forfeiture of all his goods to the King, and his body in arrest and at his will; except our lord the King, Monsieur de Lancaster, seneschall, the constable, and marshall: and that none be so hardy as to violate the safe conduit of our lord the king, upon payne of being drawn and hanged, and his goods and heritage forfeited to the King; nor to infringe the safe conducts of our said lord of Lancaster, seneschall, constable, and mareschall, upon pain of being beheaded.

XXII. ITEM, if any one take a prisoner, he shall take his faith, and also his bacinet, or gauntlet, to be a pledge and in sign that he is so taken, or he shall leave him under the guard of some of his soldiers, under pain, that if he takes him, and does not do as is here directed, and another comes afterwards, and takes him from him (if not under a guard) as is said, his bacinet or right gauntlet in pledge, he shall have the prisoner, though the first had taken his faith.

XXIII. ITEM, that no one be so hardy as to retain the servant of another, who has covenanted for the expedition, whether soldier, man at arms, archer, page or boy, after he shall have been challenged by his master, under pain that his body shall be in arrest till he shall have made satisfaction to the party complaining, by award of the court, and his horses and armour forfeited to the constable.

XXIV. ITEM, that no one be so hardy to go for forage before the lords or others, whosoever they may be, who mark out or assign the places for the foragers, if it is a man at arms, he shall lose his horses and harness to the constable, and his body shall be arrested by the marischal and if it is a valet or boy, he shall have his left ear cut off.

XXV. THAT none be so hardy as to quarter himself otherwise than by the assignment of the herbergers, who are authorized to distribute quarters, under like penalty.

XXVI. ITEM, that every lord whatsoever cause to be delivered to the constable and marischal the names of their herbergers, under penalty, that if any one goes forward and takes quarters, and his name is not delivered in to the constable and mareschall, he shall lose his horses and armour.

## III.

## CODE OF ARTICLES OF KING GUSTAVUS ADOLPHUS OF SWEDEN. (1621.)\*

## ARTICLES AND MILITARY LAWES TO BE OBSERVED IN THE WARRES.

*Imprimis.* No Commander nor private Souldier whatsoever, shall use any kind of Idolatry, Witchcraft, or Inchanting of Armes, whereby God is dishonored, upon pain of death.

2. If any shall blaspheme the name of God, either drunk or sober, the thing being proved by two or three witnesses, he shall suffer death without mercy.

3. If any shall seem to deride or scorne God's Word or Sacraments, and bee taken in the fact, hee shall forthwith bee convented before the Commissioners Ecclesiasticall, to be examined, and being found guilty, he shall be condemned by the Court of Warre to lose his head: but if they were spoken through haste or unadvisedly, for the first offence hee shall bee in yrons fourteen dayes, and for the second, be shot to death.

4. If any shall swear in his anger by the name of God, being convicted, shall pay halfe a moneth's pay unto the poor: Or if any bee found drinking, or at any other evill exercise, he shall forfeit half a moneth's pay, and at the next assembly of prayer or preaching, he shall be brought upon his knees before the whole assembly, and there crave pardon of Almighty God.

5. To the end that God's Word be by no means neglected, Our will is, that publike prayers bee said every morning and evening throughout the whole Camp, at one time, in every several Regiment, they being called thereunto by the sound of the General's or Marshal's Trumpets, and the Drums of every private Company and Regiment.

6. Whatsoever Minister shall neglect his time of prayer, except a lawfull occasion hinders him, he shall for every time being absent, pay half a moneth's pay.

7. Whatsoever Souldier shall neglect the time of prayer, and is thereof advised by his Captain, he shall lie in prison 24 hours, except a lawfull occasion hindered.

8. If any Minister be found drunk or drinking at such time as he should preach, or read prayer, for the first offence he shall be gravely admonisht by the Commissioners Ecclesiasticall, and for the second fault be banisht the Leaguer.

9. Every Holy-day and every Sabbath-day at least, shall bee kept solemn with preaching in a place convenient, before and after noon; this also to bee done twice every week, if the time will permit; if there be any

\* Translated and printed in Ward's "Animadversions of Warre," London, 1639, for the use of which I am indebted to Gen. Jas. B. Fry, through Lieut. Col. R. N. Scott, U. S. A.

holy-daies to come in the following week, the Minister shall after such Sermons or Prayers publicly bid them : who so shall neglect the time appointed (unlesse he have some lawful let or occasion) shall be punished as aforesaid.

10. All Merchants and sellers of commodities whatsoever, so soon as they hear the Token or call to bee given, shall immediately shut up their doors, and so keep them during the said time of Prayer and Sermon; they that presume in that season to sell any thing, shall make forfeit of all things so sold, whereof the one half to goe to the Generall, and the other halfe to the next Hospitall; over and above which, the offender shall for one whole day be put in prison.

11. All drinkings and feastings shall in the time of Prayer bee given over, upon pain of punishment, as is before mentioned in the seventh Article; if any Souldier herein offends, he shall forfeit half his week's pay to the poor; and if he be an Officer, hee shall forfeit what shall be awarded.

12. For the explaining of this Article formerly exprest : If there bee none to complaine of these abuses, then shall the Minister himself give notice thereof unto the Colonell or Captain, and if he shall suffer such abuses to goe unpunished, then shall he give the Generall notice thereof, who shall doe him right.

13. All Priests and Ministers that are to be in our Camp or Leaguer, shall be appointed by the Bishop of the same Diocesse or Land from whence the Souldiers come whom he is to be among : no Colonell nor Captain shall take what Minister he shall think good, but shall be content with whom the Bishop shall appoint him.

14. To the intent that all Church businesse, as well in the field as otherwhere, may have an orderly proceeding; We ordain, That there be one Ecclesiasticall Consistory or Commission in our Leaguer, the President or chiefe person whereof shall bee Our own Minister, when We ourselves are personally present in the field. In Our absence shall the chiefe Minister to the Generall be the man; his fellow-Commissioners or ordinary Assessors shall be the chiefe Ministers to every Regiment of Horse and Foot; unto whom We give full power and authority to be Judges in all Church affaires, according to the Law of God and holy Church; what shall be by them decreed, shall be of as great force and strength, as if it were determined in any other Consistorie whatsoever.

15. No Captain shall have liberty to take any Minister without the consent of his Colonell, and of the Consistory. Neither again shall he discharge any, but by permission of the Consistory, he having there first shewed that Minister not to be worthie of his Charge.

16. If any Minister be found ill inclined to drunkenness or otherwise; then may his Colonell or Captain of Horse or Foot complain of him in the Consistory; and if his fellow-Ministers find him guilty, then may they discharge him of his place. In such complaints, shall the whole Consistory and the President severely also reprehend him, that others of the same calling may take example thereby, and be warned of such grosse errors, and give good example unto others.

17. For that no government can stand firmly, unlesse it be first rightly grounded; and that the Lawes be rightly observed; We, the King of, &c., doe hereby make known unto all our Souldiers and Subjects, as well Nobles as others; that in our presence they presume not to doe any unseemly thing: but that every one give us our due honour, as we ought

to receive; who presumes to doe the contrary, shall bee punished at our pleasure.

18. Next shall our Officers and Souldiers be obedient unto our Generall and Field-Marshal, with other our Officers next under them, in whatsoever they shall command belonging unto our service, upon paine of punishment as followeth.

19. Whosoever behaves not himself obediently unto our great Generall, or our Ambassador coming in our absence, as well as if we our selves were there in person present, shall be kept in irons or in prison untill such time as he shall be brought to his answer, before a Councell of Warre, where being found guilty, whether it were wilfully done or not, he shall stand to the order of the Court, to lay what punishment upon him they shall thinke convenient, according as the person and fact is.

20. And if any shall offer to discredit these great Officers by word of mouth or otherwise, and not be able by proof to make it good, hee shall be put to death without mercy.

21. Whosoever offers to lift up any manner of Armes against them, whether hee doth them hurt or not, shall be punished by death.

22. If any offers to strike them with his hand, whether hee hit or misse, he shall lose his right hand.

23. If it falls out that our great Generall in any feast, drinking, or otherwise, doth offer injury to any Knight, Gentleman or other, which stands not with their honour to put up; then may they complain to the Commissioners for the Councell of Warre, where hee shall answer them, and bee censured by them according to the quality and importance of the fact.

24. As it is here spoken of our Generall; so also it is of all other our great Officers, as Field-Martiall, Generall of the Ordnance, Generall of the Horse, Serjeant-Major Generall, Quarter-Master Generall, and Muster-Master; all which, if they commit any such offence through envie or other by-respect, they shall answer it before the Court of Warre, as is before mentioned.

25. As every Officer and Souldier ought to be obedient unto our Generall and other great Officers; so shall they in the under Regiments be unto their Colonell, Lieutenant-Colonell, Serjeant-Major, and Quarter-Master, upon paine of the same punishment before mentioned.

26. If any Souldier or Officer serving either on horse-back or foot, shall offer any wrong or abuse unto his superiour Officer either by word or deed, or shall refuse any duty commanded him, tending unto our service, he shall be punished according to the importance of the fact.

27. If any Colonell, Lieutenant-Colonell, Serjeant-Major, or Quarter-Master, shall command any thing not belonging unto our service, he shall answer to the complaint before the Court.

28. In like manner if any inferiour Officer either of horse or foote does challenge any common Souldier to be guilty of any dishonest action; the Souldier finding himself guiltless, may lawfully call the said Officer to make proofe of his words before the Court as his equall.

29. If any Souldier either of horse or foote shall offer to strike his Officer that shall command him any duty for our service, he shall first lose his hand, and be then turned out of the Quarter. And if it be done in any Fort or place beleagured after the watch is set, he shall lose his life for it.

30. And if he doth hurt to any of them, whether it be in the field or not, he shall be shot to death.

31. If any such thing falls out within the compasse of the Leaguer or the place of Garrison, in any of the Souldiers lodgings where many of them meete together, the matter shall be inquired into by the Officers of the Regiment, that the beginner of the fray may be punished according to desert.

32. He who in the presence of our Generall shall draw his sword, with purpose to doe mischief with it, shall lose his hand for it.

33. He who shall in anger draw his sword while his Colours are flying, either in Battell or upon the March, shall be shot to death; if it be done in any strength or fortified place, he shall lose his hand, and be turned out of the Quarter.

34. He who shall presume to draw his sword upon the place where any Court of Justice is holden, while it is holden, shall lose his life for it.

35. He that draws his sword in any strength or Fort to doe mischief therewith, after the watch is set, shall lose his life for it.

36. No man shall hinder the Provost Marshall Generall, his Lieftenant or servants, when they are to execute anything that is for our service; who does the contrary, shall lose his life.

37. Leave is given unto the Provost Marshall Generall to apprehend all whatsoever that offends against these our Articles of Warre. All other offenders he may likewise apprehend by his owne authority.

38. If the Provost Marshall Generall shall apprehend any man by his owne authority; he may keepe him either in prison or in irons, but by no means doe execution upon him after the Court of Warre is ended, without first giving the Generall notice thereof.

39. The Provost Marshals of every Regiment, have also the same priviledge under their owne Regiment and Company, that the Provost Marshall Generall hath in the Leaguer.

40. Every Serjeant Major commanding in the whole Leaguer what appertaines to his Office, shall be obeyed by every man with his best endeavour.

41. Whatsoever is to be published or generally made knowne shall be proclaimed by sound of Drumme and Trumpet, that no man may pretend ignorance in it; they who after that shall be found disobedient, shall be punished according to the quality of the fact.

42. No Souldier shall thinke himselfe to good to work upon any peece of Fortification, or other place where they shall be commanded for our service upon paine of punishment.

43. Whosoever shall do his Majesties businesse slightly or lazily, shall first ride the wooden horse, and lie in prison after that, with bread and water, according as the fact shall bee adjudged more or lesse hainous.

44. All Officers shall diligently see that the Souldiers plye their worke, when they are commanded so to doe; he that neglects his duty therein shall be punished according to the discretion of the Court.

45. All Souldiers ought diligently to honour and obey their Officers, and especially being by them commanded upon service; but if at any time they can on the contrary discover that they are commanded upon a service which is to our prejudice any manner of way; then shall that souldier not obey him what charge soever he receives from him, but is presently to give notice of it.

46. No Colonell nor Captaine shall command his souldiers to doe any unlawful thing; which who so does, shall be punished according to the discretion of the Judges. Also if any Colonell or Captaine or other Officer whatsoever, shall by rigour take any thing away from any common souldier, he shall answer for it before the Court.

47. No man shall goe any other way in any Leaguer wheresoever, but the same common way laid out for every man, upon paine of punishment.

48. No man shall presume to make any Alarme in the quarter, or to shoot off his Musket in the night time, upon paine of death.

49. He that, when warning is given for the setting of the watch by sound of Drumme, Fife, or Trumpet, shall wilfully absent himself without some lawful excuse; shall be punished with the wooden horse, and be put to bread and water, or other pittance, as the matter is of importance.

50. He that is taken a sleepe upon the watch, either in any strength, trench, or the like, shall be shot to death.

51. He that comes of his watch where he is commanded to keepe his Guard, or drinke himselfe drunke upon his watch or place of Sentinell, shall be shot to death.

52. He that at the sound of Drumme or Trumpet repaires not to his Colours, shall be clapt in irons.

53. When any march is to be made, every man that is sworn shall follow his Colours; who ever presumes without leave to stay behind shall be punished.

54. And if it be upon mutiny that they doe it, be they many or be they few, they shall die for it.

55. Who ever runnes from his Colours, be he Native or Forreiner, and does not defend them to the uttermost of his power so long as they be in danger, shall suffer death for it.

56. He that runnes from his Colours in the field shall dye for it; and if any of his Comrades kill him in the meane time he shall be free.

57. Every man is to keep his own ranck and file upon the march, and not to put others from their orders; nor shall any man cast himselfe behind, or set himselfe upon any waggon, or horse-back; the offenders to be punished according to the time and place.

58. Whatever Regiment shall first charge the enemy and retire afterwards from them before they come to dint of sword with them, shall answer it before our highest Marshals Court.

59. And if the thing be occasioned by any Officer, he shall be publicly disgraced for it, and then turned out of the Leaguer.

60. But if both Officers and Souldiers bee found faulty alike, then shall the Officers be punished as aforesaid. If it bee in the Souldiers alone, then shall every tenth man be hanged; the rest shall bee condemned to carry all the filth out of the Leaguer, until such time as they performe some exploit that is worthy to procure their pardon, after which time they shall bee cleer of their former disgrace. But if, at the first, any man can by the testimony of ten men prove himselfe not guilty of the cowardize, he shall goe free.

61. When any occasion of service is, hee that first runs away, if any man kill him, hee shall bee free; and if at that time he escape, and be apprehended afterwards, he shall be proclaimed Traitor, and then put out of the Quarter; after which, whosoever killeth him, shall never be called to account for it.

62. If any occasion be to enter any Castle, Towne or Sconce by assault or breach, he who retires from the place before hee hath been at handy blowes with the enemy, and hath used his sword, so farre as it is possible for him to doe service with it, and before he bee by main strength beaten from it by the enemy, shall be punished as the Court shall censure him.

63. Whatsoever Ensigne-bearer shall flye out of any place of Battery, Sconce or Redout, before hee hath endured three assaults, and receive no reliefe, shall be punished as before.

64. Whatsoever Regiment, Troop or Company refuseth to advance forwards to charge the enemy, but out of fear and cowardize staves behind their fellowes, shall be punished as before.

65. Whatsoever Regiment, Troop or Company is the beginner of any mutiny, shall be punished as is before mentioned; the first authour to die for it, and the next consenter to bee punished according to the discretion of the Court.

66. If any Regiment, Troop or Company shall flye out of the Field or Battell, then shall they three several times (six weeks being betwixt every time) answer for it before the Court, and if there it can be proved that they have done ill, and have broken their Oath, they shall be proclaimed Traitors, and all their goods shall bee confiscated, whether they bee present to answer it before the Court or not: if they bee absent they shall bee allotted so many daies as wee shall appoint them for liberty to come in to answer it before the Court, where, if they cleer themselves, well and good; if not, they shall have so many daies to retire themselves after which, if they be apprehended, then shall they be punisht according as the Court shall doom them.

67. Whatsoever Regiment, Troop or Company shall treat with the enemy, or enter into any conditions with them whatsoever (without our leave, or our Generals, or chief Commander in his absence) whatsoever officer shall doe the same, shall be put to death for it, and all his goods shall bee confiscated; of the souldiers every tenth man shall be hanged, and the rest punished, as aforesaid.

68. Whosoever presuming to do the same, and shall be taken therewith, shall bee proceeded withall like those that flye out of the field; their goods also shall be confiscate.

69. If any that then were in company with such, can free themselves from being partakers in the crime, and can prove that they did their best to resist it, then shall they be rewarded by us according as the matter is of importance.

70. Whoever, upon any strength, holds discourse with the enemy, more or lesse, without our leave, our Generals, or the Governour of the place; shall die for it.

71. If it bee proved that they have given the enemy any private intelligence, by letter or otherwise, without our leave as aforesaid; shall die for it.

72. They that give over any strength unto the enemy, unlesse it be for extremity of hunger or want of Ammunition; the Governour, with all the Officers, shall die for it; all the souldiers shall be lodged without the quarters, without any Colours, they shall be made to carry out all the filth of the Leaguer; thus to continue untill some noble exploit of them be performed, which shall promerit pardon for their former cowardize.

73. Whatsoever souldiers shall compell any Governour to give up

any Strength, shall lose their life for it: those, either Officers or Souldiers, that consent unto it, to be thus punished; the Officers to die all, and the Souldiers every tenth man to be hanged: but herein their estate shall be considered, if they already have suffered famine and want of necessaries for their life, and bee withall out of hope to bee relieved, and are so pressed by the enemy, that of necessity they must within a short time give up the Peece, endangering their lives thereby, without all hope of reliefe: herein shall our Generall, with his Councell of Warre, either cleer them, or condemne them according to their merit.

74. If any number of Souldiers shall, without leave of their Captain, assemble together for the making of any convention, or taking of any councell amongst themselves; so many inferiour Officers as bee in company with them shall suffer death for it, and the souldiers be so punished as they that give up any Strength. Also at no time shall they have liberty to hold any meeting amongst themselves, neither shall any Captain permit it unto them; he that presumeth to suffer them shall answer it before our highest Court.

75. If any being brought in question amongst others, shall call for help of his own Nation or of others, with intention rather to bee revenged than to defend himself; he shall suffer death for it, and they that come in to help him shall bee punished like Mutiners.

76. Whosoever giveth advice unto the enemy any manner of way, shall die for it.

77. And so shall they that give any token signe or Item unto the enemy.

78. Every man shall be contented with that Quarter that shall be given him either in the Town or Leaguer; the contrary doer to be accounted a Mutiner.

79. Whoever flings away his Armes, either in field or elsewhere, shall be scourged through the Quarter, and then be lodged without it, be enforc'd to make the streets clean until they redeem themselves by some worthy exploit doing.

80. He that selleth or pawneth his armes or any kind of ammuniton whatsoever, or any Hatchets, Spades, Shovels, Pickaxes, or other the like necessary instruments used in the field, shall be, for the first and second time, beaten through the Quarters, and for the third time, punish'd as for other theft: hee also that buieth or taketh them upon pawn, be he souldier or be he victualler, he shall first lose his money, and then bee punished like him that sold them.

81. He that wilfully breaketh any of his Armes or Implements aforesaid, shall again pay for the mending of them, and after that be punish'd with bread and water, or otherwise, according to the discretion of the Court.

82. Hee that after warning to the contrary, shall either buy or sell, shall first lose all the things so sold or bought, and then be punished for his disobedience, as is aforesaid.

83. No man that once hath been proclaimed Traitor, either at home or in the field, or that hath been under the hangman's hands, shall ever bee endured again in any Company.

84. No Duell or Combat shall bee permitted to bee fought either in the Leaguer or place of Strength: if any offereth to wrong others, it shall bee decided by the Officers of the Regiment; he that challengeth the field of another shall answer it before the Marshal's Court. If any



Captain, Lieutenant, Ancient, or other inferiour officer, shall either give leave or permission unto any under their command, to enter combat, and doth not rather hinder them, shall be presently cashiered from their charges, and serve afterwards as a Reformado or common souldier; but if any harm be done, he shal answer it as deeply as he that did it.

85. Hee that forceth any woman to abuse her, and the matter bee proved, hee shall die for it.

86. No Whore shall be suffered in the Leaguer; but if any will have his own wife with him, he may; if any unmarried woman bee found, hee that keeps her may have leave lawfully to marry her, or else be forced to put her away.

87. No man shall presume to set fire on any Town or Village in our Land: if any doe, he shall bee punished according to the importancy of the matter, so as the Judges shall sentence him.

88. No Souldier shall set fire upon any Town or Village in the enemies' Land, without he be commanded by his Captain: neither shall any Captain give any such command unlesse hee hath first received it from us or our Generall: who so doth the contrary, he shall answer it in the Generals Councell of Warre according to the importance of the matter; and if it be proved to bee prejudiciall unto us, and advantagious for the enemy, he shall suffer death for it.

89. No Souldier shall pillage anything from our subjects upon any March, Strength, Leaguer, or otherwise howsoever, upon pain of death.

90. He that beats his Host or his household servants, the first and second time hee shall be put in yrons, and made to fast with bread and water according as the wrong is that he hath done, if the harme be great, hee shall be punish'd thereafter, according to the discretion of the Court.

91. None shall presume to do wrong to any that brings necessaries to our Leaguer, Castle or Strength whatsoever, or to cast their goods down off their Horses, and take away their Horses perforce; which who so doth shall die for it.

92. They that pillage or steal either in our Land or in the enemies, or from any of them that come to furnish our Leaguer or Strength, without leave, shall bee punish'd as for other theft.

93. If it so please God that we beat the enemy, either in the field or in his Leaguer, then shall every man that is appointed follow the chase of the enemy, and no man give himselfe to fall upon pillage, so long as it is possible to follow the enemy, and untill such time as he be assuredly beaten; which done, then may their quarters be fallen upon, every man taking what he findeth in his owne quarters; neither shall any man fall to plunder one in anothers quarters, but rest himselfe contented with that which is assigned him.

94. If any man give himselfe to fall upon the pillage before leave be given him so to doe, then may any of his Officers kill him. Moreover, if any misfortune ensue upon their greedinesse after the spoyle, then shall all of them suffer death for it; and, notwithstanding there comes no damage thereupon, yet shall they lye in Irons for one moneth, living all that while upon bread and water, giving all the pillage so gotten unto the next Hospitall. He that plunders another quarter, shall also have the same punishment.

95. When any Fort or place of Strength is taken in, no man shall fall upon the spoyle before that all the places in which the enemy is lodged

be also taken in, and that the Souldiers and Burgers have layed downe their Armes, and that the quarters be dealt out and assigned to every body; who so does the contrary, shall be punished as before.

96. No man shall presume to pillage any Church or Hospitall, although the Strength be taken by assault; except he be first commanded, or that the Souldiers and Burgers be fled thereinto and doe harme from thence; who dares the contrary, shall be punished as aforesaid.

97. No man shall set fire upon any Hospitall, Church, Schoole, or Mill, or spoyle them any way, except he be commanded; neither shall any tyrannize over any Churchman, or aged people, men or women, maides or children, unless they first take armes against them, under paine of punishment at the discretion of the Judges.

98. No souldier shall abuse any Churches, Colledges, Schooles or Hospitalls; or offer any kind of violence to Ecclesiasticall persons, nor in any way be troublesome with pitching or inquartering upon them, or with exacting of contribution from them; no souldier shall give disturbance or offence to any person exercising his sacred function or Ministry, upon paine of death.

99. Let the billet and lodgings in every City be assigned to the Souldiers, by the Burge-masters or chiefe Head-borroughes; and let no Commander presume to meddle with that office; no Commander or common souldier shall either exact or receive of the Townesmen or Citizens anything, besides what the King or his Generall in his absence hath appointed to be received.

100. No Citizen nor Countryman shall be bound to allow unto either Souldier or Officer any thing but what is contained in the King's Orders, for contributions and enquarterings; (viz.) nothing besides house-rooms, fire-wood, candle, vineger and salt, which is yet to be understood that the inferiour Officers, as Serjeants and Corporalls, and those under them, as also all common Souldiers, shall make shift with the common fire and candle of the house where they lie, and do their businesse by them.

101. If so be that Colonels and other Commanders have any servants or attendants, they shall not be maintained by the Citizens or Yeomandry, but by their own Masters.

102. No Commander shall take any house or lodging in his protection, or at his owne pleasure give a ticket of freedome, when such tickets are not expresly desired of him, nor shall he receive any bribe or present to mend his owne commons withall, under any colour or pretext whatsoever. If any man desire a personall safeguard, let him be contented with that which is appointed in the King's Orders.

103. To Commanders and Souldiers present, let the usuall allowance be offered by the Citizens, but let no care be taken for such as are away.

104. New-levied Souldiers are to have no allowance before they be entertained at the Muster.

105. Nothing is to be allowed the Souldiers in any house but in the same where he is billeted; if they take any thing elsewhere by force, they are to make it good.

106. If either Officer, Souldier, or Sutler be to travell through any Country, the people are not to furnish them with Waggones, Post-horse, or victuals but for their ready money, unlesse they bring a Warrant either from the King or the Generall.

107. No Souldier is to forsake his Colours, and to put himself under

the entertainment of any other Colonell or Garrison, or to ramble about the Countrey, without he hath his Colonel's Passe, or his that is in his stead : who so doth, it shall bee lawfull for any man to apprehend him, and send him prisoner to the next Garrison of the King's, where he shall be examined, and punished accordingly.

108. Whosoever have any lawfull Passes, ought by no means to abuse the benefit of them, or practise any cheats under the pretence of them. If any be found with any pilfery, or to have taken any man's cattell or goods; it shall be lawfull for the Countrey-people to lay hands upon them, and to bring them to the next Garrison ; speciall care being had, that if the prisoner hath any letters of moment about him, they be speedily and safely delivered.

109. Our Carriers or Posts, though they have lawfull Passes to travell withall, yet shall they not ride their Post-horses, which they hire, beyond the next Stage. And if they shall take away any horse from one or other, to tire out with hard riding, and beyond reason ; they shall be bound to return the horse again, or to make satisfaction for him. The same order shall take place too, when any Regiment or Troops of ours shall remove from one Quarter to another ; namely, when they shall hire Postillions or baggage-Waggons for the carriage of their Valises, Armes or Ammunition.

110. The houses of the Princes or Nobility which have no need to borrow our Guard to defend them from our enemy, shall not be pressed with souldiers.

111. Moreover, under a great penaltie, it is provided, that neither Officers nor Souldiers shall make stay of, or arrest the Princes Commissaries or Officers, or any Gentlemen, Councillors of State, Senators or Burgers of any Cities, or other countrey-people ; nor by any fact of violence shall offend them.

112. Travellers, or other passengers going about their businesse into any Garrisons or places of Muster, shall by no means bee stayed, injured, or have contribution laid upon them.

113. Our Commanders shall defend the countrey-people and Ploughmen that follow their husbandry, and shall suffer none to hinder them in it.

114. No Commander or common souldier whatsoever, either in Town of Garrison, or place of Muster, shall exact anything upon Passengers, nor shall lay any Custome or Toll upon any Merchandize imported or exported ; nor shall any bee a hindrance to the Lord of the place, in receiving his due Customes or Toll-gathering ; but to further them.

115. If any of our Officers having power of Command, shall give the Word for any Remove or March to some other Quarter ; those souldiers either of Horse or Foot that privily lurk behind their fellows shall have no power to exact part of the contributions formerly allotted for their maintenance in that place ; but shall severally be punished rather for their lingering behind the Army.

116. Whatsoever is not contained in these Articles, and is repugnant to Military Discipline, or whereby the miserable and innocent country may against all right and reason be burdened withall, whatsoever offence finally shall be committed against these orders, that shall the severall Commanders make good, or see severally punished unlesse themselves will stand bound to give further satisfaction for it.

117. According to these Articles, let every man governe his businesse

and actions, and learne by them to take heed in comming into lurch or danger.

118. If any Souldier happens to get free-booty in any Castle, City, Towne, Fort Strength, or Leaguer; and moreover whatsoever Ordnance, Munitiō for Warre, and victuals is found there, shall be left for our use, the rest shall be the Souldiers, only the tenth part thereof shall they give to the sicke and inaimed Souldiers in the Hospitalls. All prisoners shall first be presented to us, amongst which if there bee any man of note, whom we desire to have unto our selves, wee promise in lieu thereof honestly to recompence the taker of him, according to the quality of the person; other prisoners of inferiour ranke may the takers keep unto themselves, whom by our leave or our Generalls they may put to their ransome and take it to themselves, but without leave they may not ransome them upon paine of death.

119. If any bee found drunken in the enemies Leaguer Castle, or Towne, before the enemy hath yielded himself wholly up to our mercy, and laid downe his Armes; whosoever shall kill the said drunken Souldier, shall be free for it; alwayes provided that good prooffe be brought that hee was drunken; and if that Souldier escape for that time with his life, and that it can appeare that some dammage or hindrance hath come unto our service by his drunkennesse, then wheresoever he be apprehended he shall die for it; but if no hurt ensued thereof, yet shall be put in irons for the space of one month, living upon his pittance of Bread and Water.

120. All our Souldiers shall duely repaire unto the generall musters upon the day and houre appointed; nor shall any Colonell or Captaine either of Horse or Foot, keepe backe his Souldiers from being mustered at the time when our Muster-masters shall desire to view them; if any refuse, he shall be taken for a Mutiner.

121. No Colonell nor Captaine shall lend any of their Souldiers to another upon the Muster-dayes for the making up of their numbers compleat; he that thus makes a false Muster, shall answer it at the Marshalls Court, where being found guilty he shall be proclaimed Traitor; after which being put out of the Quarter, his Colours shall flie no more.

122. If any Souldier hires out himselfe for money to runne the Gate-lope\* three severall times, he shall be beheaded, and if any Captaine shall so permit or counsell his Souldier to doe the same, he shall be actually cashiered.

123. If any Horseman borrowes either Horse, Armour, Pistols, Saddle, Sword, or Harnesse to passe Muster withall, so much as is borrowed shall be escheated, and himselfe after that turned out of the Leaguer, as likewise he shall that lent it him; the one halfe of the Armes forfeited shall goe to the Captaine, and the other halfe unto the Parforce.

124. If it can be proved that any Horseman hath wilfully spoyled his Horse; hee shall bee made Traitor, lose his Horse and bee turned out the Quarter.

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\* Running the Gate-lope or Purgatory, is, when he that hath done the fault, is to run between the Regiment standing halfe on one side, and halfe on the other, with whips or bastinadoes in their hands, to lash and cudgel the offender, which punishment many a shameless souldier will be hired to undergo for drinke or money. (Note by Ward.)

125. All Souldiers both of Horse and Foot shall be taken on at a free Muster, but not by any private Captaine; neither shall their pay goe on before they be mustered by our Muster-masters.

126. No Souldier either of Horse or Foot shall be cashiered by his Colonell, Captaine, or other inferiour officer; nor shall they who being taken on at a free Muster, have their men sworne to serve (if it please God) untill the next Muster, except it be upon a free Muster, at which time the Muster-masters, and his Colonell may freely give him his Passe.

127. If any forreine Souldiere shall desire his passe in any Towne of Garrison after the enemy be retired he may have it; but by no means whilst there is any service to be done against the enemy.

128. If any Souldier or Native subject, desires to bee discharged from the warres, he shall give notice thereof unto the Muster-masters; who if they finde him to bee sicke, or maimed, or that hee served twenty yeares in our warres, or hath beene ten severall times before the enemy, and can bring good witness thereof, he shall be discharged.

129. If any Colonell or Captaine, either of Horse or Foot, does give any Passe otherwise than is before mentioned, he shall be punished as for other Felonies; and he who hath obtained the same Passe, shall lose three moneths pay, and be put in prison for one moneth, upon bread and water.

130. No Colonell or Captaine either of Horse or Foot shall give leave to his Souldiers to goe home out of the Field, without leave of our Generall, or chiefe Commander; whosoever does the contrary, shall lose three moneths pay, and be put in prison for one moneth, upon Bread and Water.

131. No Captaine either of Horse or Foote shall presume to goe out of any Leaguer or place or Strength to demand his pay, without leave of the Generall or Governour; who so doth, shall be cashired from his place, and put out of the quarters.

132. No Captaine either of Horse or Foot shall hold backe any of his souldiers, meanes from him; of which if any complaine, the Captaine shall answer it before the Court, where being found guilty, he shall be punished as for other Felony; also if any mischance ensue thereupon, as that the Souldiers mutine, be sicke, or endure hunger, or give up any Strength; then shall he answer for all those inconveniences, that hereupon can or may ensue.

133. If any Captaine lends money unto his souldiers which he desires should be paid againe; that must be done in the presence of the Muster-masters, that our service be no way hindred or neglected.

134. If upon necessity the case sometimes so falls out in the Leaguer, that pay bee not always made at the due time mentioned in the Commissions, yet shall every man in the meane time be willing to further our service, seeing they have victuals sufficient for the present, and that they shall so soone as may bee receive the rest of their means, as is mentioned in their Commission.

135. Very requisite it is, that good justice be holden amongst our Souldiers, as well as amongst other our Subjects.

136. For the same reason was a King ordained by God to be the Sovereigne Judge in the field as well as at home.

137. Now therefore in respect of many occasions which may fall out, his single judgment alone may bee too weak to discern every particular circumstance; therefore it is requisite that in the Leaguer, as well

as elsewhere, there be some Court of Justice erected for the deciding of all controversies; and to be carefull in like manner, that our Articles of warre be of all persons observed and obeyed so farre forth as is possible.

138. We ordained therefore that there be two Courts in our Leaguer: a high Court and a lower Court.

139. The lower Court shall be amongst the Regiments both of Horse and Foot, whereof every Regiment shall have one among themselves.

140. In the Horse-Regiments the Colonell shall be President, and in his absence the Captaine of our owne Life-guards; with them are three Captains to be joyned, three Lieutenants, three Cornets, and three Quarter-masters, that so together with the President they may be to the number of thirteene at the leaste.

141. In a Regiment of Foot the Colonell also shall be President, and his Lieutenant Colonell in his absence; with them are two Captains to be joyned, two Lieutenants, two Ensignes, foure Serjeants, and two Quarter-masters; that together with the President they may be thirteene in number also.

142. In our highest Marshall Court, shall our General be President; in his absence our Field Marshall; when our Generall is present, his associates shall be our Field Marshall first, next him our General of the Ordnance, Serjeant Major Generall, Generall of the Horse, Quarter-Master-General; next to them shall sit our Muster-Masters and all our Colonells, and in their absence their Lieutenant Colonells, and these shall sit together when there is any matter of great importance in controversie.

143. Whensoever this highest Court is to be holden they shall observe this order; our great Generall as President, shall sit alone at the head of the Table, on his right hand our Field-Marshall, on his left hand the Generall of the Ordnance, on the right hand next our Serjeant-Major-General, on the left hand againe the Generall of the Horse, and then the Quarter-Master-General on one hand, and the Muster-Master-General on the other; after them shall every Colonell sit according to his place as here followes; first, the Colonell of our Life Regiment, or of the Guards of our owne person; then every Colonell according to their places of antiquity. If there happen to be any great men in the Army of our subjects, that be of good understanding, they shall cause them to sit next these Officers; after these shall sit all the Colonells of strange Nations, every one according to his antiquity of service.

144. All these Judges both of higher and lower Courts, shall under the blue Skies thus sweare before Almighty God, that they will inviolably keep this following oath unto us: *I. R. W.* doe here promise before God upon his holy Gospell, that I both will and shall Judge uprightly in all things according to the Lawes of God, of our Nation, and these Articles of Warre, so farre forth as it pleaseth Almighty God to give me understanding; neither will I for favour nor for hatred, for good will, feare, ill will, anger, or any gift or bribe whatsoever, judge wrongfully; but judge him free that ought to be free, and doom him guilty, that I finde guilty; as the Lord of Heaven and Earth shall help my soule and body at the last day, I shall hold this oath truly.

145. The Judges of our highest Court shall take this their oath in the first Leaguer, where our Campe shall be pitched; our Generall, and the rest appointed to set with him shall repaire to the place where we shall

appoint, before his Tent, or elsewhere; where an officer appointed by us shall first take his oath, and then the others oathes also.

146. When the President of our lower Courts shall heare this foresaid oath read before them, then shall they hold up their hands, and sweare to keep it; in like manner, so often as any Court is to be holden in any Regiment, the aforesaid oath shall be read before all them that sit in judgment with him, who shall also hold up their hands and promise to keep the oath aforesaid.

147. In our highest Court, there shall be one Sworne Secretary appointed, who shall make a diligent record of all the proceedings that shall fall out, either in any pitcht Battell, Skirmish, Leaguer, or any other peece of service whatsoever; he shall take the note, both of the day, place, and houre, with all other circumstances that shall happen; he shall also set his hand unto all sentences signed by our Generall; he shall have also two Clerkes or Notaries under him, who shall ingrosse all these passages, and keepe a true Register of all enterprises that our Generall with his Counsell of Warre shall give order to have done; and likewise of what letters be either written or received.

148. In our highest Court there shall be one Vice-president, who shall command the Serjeant at Armes, whose office is to warne in all the Judges of the Court, that they may there appeare at the time and place appointed, and also to give the same notice both unto the Plaintife and Defendant.

149. In all lower Courts also, there shall be one sworne Clerke or Secretary who shall likewise hold the same order that is mentioned in our highest Court.

150. Our highest Court shall be carefull also to heare and judge all criminall actions, and especially cases of conspiracy or treason practised or plotted against us, or our Generall either in word or deed; secondly, if any gives out dishonourable speeches against our Majesty; thirdly, or consulteth with the enemy to betray our Leaguer, Castle, Towne, Souldiers, or Fleet any way whatsoever; fourthly, if any there be partakers of such treason or treachery, and reveale it not; fifthly, or any that hath held correspondency and intelligence with the enemy; sixthly, if any hath a spite or malice against us or our Country; seventhly, if any speake disgracefully, either of our owne Generalls person or endeavours; eighthly, or that intendeth treachery against our Generall or his Under-Officers; or that speaketh disgracefully of them.

151. All questions in like manner happening betwixt Officers and their Souldiers, if they suspect our lower Court to be partiall any way, then may they appeale unto our highest Court, who shall decide the matter.

152. If a Gentleman or any Officer be summoned to appeare before the lower Court, for any matter of importance that may touch his life, or honour; then shall the same be decided by our higher Court.

153. All civill questions shall be in controversie in our lower Court, if the debt or fine extends unto five hundred Dollars or seventy-five pounds or above; if the party complains of injustice, they may thence appeale unto the higher Court, if so be they can first prove the injustice.

154. All other occasions that may fall out, be they civill, or be they criminall; shall first come before the lower Court where they shall be heard and what is there by good evidence proved, shall be recorded.

155. Any criminall action, that is adjudged in our lower Court, we command that the sentence be presented unto our Generall; we will not

have it presently put in execution, untill he gives command for it in our absence. But our selves being in person there present, will first take notice of it, and dispose afterwards of it, as we shall think expedient.

156. In our higher Court, the Generall Parforce, or his Lieutenant shall be the Plaintife, who shall be bound to follow the complaint diligently, to the end he may the better informe our Counsellors who are to doe Justice: if it be a matter against ourselves, then shall our owne Advocate defend our action before our Court.

157. The same power the Parforce of every Regiment shall have in our lower Court, which Parforce shall be bound, also to give notice of every breach of these Articles of warre, that the infringer may be punished.

158. Whatsoever fine is by the aforesaid Judges determined according to our Articles of warre, and escheated thereupon, shall be divided into three parts. Our owne parte of the fine we freely bestow upon the severall Captains either of Horse or Foot, which is forfeited by their Officers and Souldiers; and the forfeiture of every Captain, we bestow upon their Colonell; and the forfeiture of every Colonell we give unto our Generall. The other two parts, belonging either to the party to whom it is adjudged, or to the Court, those leave we undisposed, the point of Treason onely excepted: and this gift of ours unto our Officers, is to be understood to indure so long as the Army be in the field, upon any strength or worke, and till they come home againe, after which time, they shall come under the law of the land like the other inhabitants.

159. Whensoever our highest Court is to sit, it shal be two houres before proclaimed through the Leaguer, that there is such an action criminall to be there tried, which is to be decided under the blue skies: but if it be an action civill, then may the court be holden within some tent, or elsewhere; then shall the souldiers come together, about the place where the Court is to be holden, no man presuming to come too neere the table where the Judges are to sit; then shall our Generall come foremost of all, and the other his associates, two and two together, in which order, they all comming out of the Generalls tent, shall set themselves down in the Court, in the order before appointed; the Secretaries place shall be at the lower end of the table, where he shall take diligent notice in writing of all things declared before the Court; then shall the Generall Parforce begin to open his complaint before them, and the contrary party shall have liberty to answer for himselfe, untill the Judges be thoroughly informed of the truth of all things.

160. If the Court be to be holden in any house or tent, they shall observe the same order in following the Generall in their degrees, where they shall also sit as is afore mentioned.

161. The matter being thoroughly opened and considered upon, according to the importance of it, and our whole Court agreeing in one opinion; they shall command their sentence concerning the same action, to be publicly there read in the hearing of all men, alwayes reserving his Majesties further will and pleasure.

162. In our lower Court they shall also hold the same order; saving that the particular Court of every Regiment, shall be holden in their owne quarters.

163. In this lower Court, they shall alwayes observe this order; namely, that the President sits at the bords end alone, the Captaines, Lieutenants, and Ensignes on either side; so many inferior Officers also upon each



side, that so they may the better reason upon the matter amongst themselves; Last of all, shall the Clerke or Secretary sit at the lower end of the Table; the one party standing upon one hand, and the other upon the other.

164. So soon as the sentence is given the President shall rise up and all that sit with him, but doom being given by our Generall, that one of the parties must lose his head, hand, or the like; then shall they command the Parforce to take him away to Prison, which done, the Parforce shall send unto the Minister, to desire him to visit the Party, and to give him the Communion; but if the doom be passed in any lower Court, it shall be signified up unto the Generall in our absence, who shall either pardon the fact, or execute the sentence.

165. No superiour Officer, Colonel or Captain, either of Horse or Foot, shall sollicite for any man that is lawfully convicted by the Court, either for any crime, or for not observing of these Articles of Warre; unlesse it be for his very neere kinsman, for whom nature compells him to intercede; otherwise the solliciter shall be held as odious as the delinquent and cashiered from his charge.

166. Whosoever is minded to serve us in these Warres, shall be obliged to the keepin of these Articles. If any out of presumption, upon any Strength, in any Leaguer, in the field, or upon any worke, shall doe the contrary, be he Native or be he Stranger, Gentleman or other, Processe shall be made out against him for every time, so-long as he serves us in these warres in the quality of a Souldier.

167. These Articles of warre we have made and ordained for the welfare of our Native Countrey, and doe command that they be read every moneth publickly before every Regiment, to the end that no man shall pretend ignorance. We further will and command all, whatsoever Officers higher or lower, and all our common souldiers, and all others that come into our Leaguer amongst the souldiers, that none presume to doe the contrary hereof upon paine of rebellion, and the incurring of our highest displeasure; For the firmer confirmation whereof, we have hereunto set our hand and seale.

SIGNED IN THE LEAGUER ROYALL.

## IV.

## EXTRACT FROM THE "ENGLISH MILITARY DISCIPLINE" OF JAMES II. (1686.)

## OF COUNCELS OF WAR OR COURTS MARTIAL.

In an Army the Council of War is always to Meet at the Generals Quarters or Tent, and none are called to it but the Lieutenant-Generals, the Major-Generals, the Brigadiers, and the Colonels or Commanders of Bodies when the Matters concern their Regiments.

Private Councils of War or Courts Martial in a Garison are either Held at the Governours House, at the Main Guard, or where the Governour orders. In a Camp, At the Colonels Tent, who causes Notice to be given to the Captains to be present.

When all are met, The Governour or Colonel, or he who is to Sit as President, takes his place at the head of the Table, the Captains Sit about according to their Seniority (that is to say) The First Captain on the Right Hand of him that Presides, The Second on the Left, and so of the rest. And the Town-Major or the Aid-Major or Quarter-Master of the Regiment, who in the absence of the Judge-Advocate discharges his Office, is to Sit in his Place at the lower end of the Table.

The Lieutenants, Sub-Lieutenants and Ensigns have right to enter into the Room where the Council of War (or Court Martial) is held, But they are to stand at the Captains backs with their Hats off, and have no Vote.

If the Council be Called to Deliberate on some Matter of Consequence, The President having Opened it to the Court, Asks their Opinions.

The youngest Officer gives his Opinion first, and the rest in order till it come to the President who speaks last. The Opinions of every one being set down in Writing, the Result is drawn conformable to the Plurality of Votes which is Signed by the President onely.

If the Council of War, or Court-martial be held to judge a Criminal, the President and Captains having taken their places, and the Prisoner being brought before them, And the Informations read, The President Interrogates the Prisoner about all the Facts whereof he is accused, and having heard his Defence, and the Proof made or alleged against him, He is ordered to withdraw, being remitted to the Care of the Marshal or Jaylor. Then every one judges according to his Conscience, and the Ordinances or Articles of War. The Sentence is framed according to the Plurality of Votes, and the Criminal being brought in again, The Sentence is Pronounced to him in the name of the Council of War, or Court Martial.

When a Criminal is Condemned to any Punishment, the Provost Martial causes the Sentence to be put in Execution; And if it be a publick Punishment, the Regiment ought to be drawn together to see it, that thereby the Soldiers may be deterred from offending. Before

a Soldier be punished for any infamous Crime, he is to be publicly Degraded from his Arms, and his coat stript over his ears.

A Council of War or Court Martial is to consist of Seven at least with the President, when so many Officers can be brought together ; And if it so happen that there be not Captains enough to make up that Number, the inferiour Officers may be called in.

## V.

## ARTICLES OF WAR OF JAMES II. (1688.)

RULES AND ARTICLES FOR THE BETTER GOVERNMENT  
OF HIS MAJESTIES LAND-FORCES IN PAY.

## ART. I.

All Officers and Soldiers (not having just Impediment) shall diligently frequent Divine Service and Sermon, in such Places as shall be appointed for the Regiment, Troop, or Company, wherein they Serve; and such as either wilfully or negligently Absent themselves from Divine Service or Sermon, or else, being present, do behave themselves undecently or irreverently during the same; If they be Officers, They shall be severely reprehended at a Court-Martial; But if private Soldiers, they shall for every such First Offence forfeit each man Twelve Pence, to be deducted out of their next Pay; And for the Second Offence, shall forfeit Twelve Pence, and be laid in Irons for Twelve Hours; and for every like offence afterwards, shall suffer and pay in like manner.

## ART. II.

If any Sutler or Seller of Ale, Beer, Wine, or any sort of Drinks, Bread, Victuals, or other Commodities or Merchandise whatsoever, attending His Majesties Forces, shall during the time of Divine Service, or Sermon, set any such thing to sale, he shall forfeit the full value thereof, for the use of the Poor.

## ART. III.

Whosoever shall use any unlawful Oath or Execration (whether Officer or Soldier) shall incur the Penalties exprest in the first Article.

## ART. IV.

If any Officer or Soldier shall presume to Blaspheme the Holy and Undivided Trinity, or the Persons of God the Father, God the Son, or God the Holy Ghost; Or shall presume to speak against any known Article of the Christian Faith, he shall have his Tongue Bored through with a Red-hot Iron.

## ART. V.

If any Officer or Soldier shall Abuse or Profane any Place Dedicated to the Worship of God, or shall offer Violence to any Chaplain of the Army, or any other Minister of God's Word, he shall suffer such Punishment as shall be inflicted on him by a Court-Martial.

And whosoever shall take any of the Utensils or Ornaments belong-

ing or Dedicated to God's Worship, in any Church or Chappel, shall suffer Death for the Fact.

## ART. VI.

All Officers of what Quality or Condition soever, shall take the following Oath, which shall be Administered to them, by such Person or Persons, and in such Places as His Majesty, His General, Lieutenant General, or Commander in Chief of the Forces for the time being, shall appoint.

*The Oath of Fidelity to be taken by every Officer and Soldier in the Army.*

I, A. B., Do Swear to be true and faithful to my Sovereign Lord King JAMES, and to His Heirs and Lawful Successors; and to be Obedient in all things to His General, Lieutenant General, or Commander in Chief of His Forces, for the time being, And will behave myself obediently towards my Superior Officers in all they shall command me for His Majesty's Service. And I do further Swear, That I will be a true, faithful, and obedient Servant and Soldier, every way performing my best Endeavours for His Majesty's Service, Obeying all Orders, and Submitting to all such Rules and Articles of War, as are or shall be Established by His Majesty; and I do likewise Swear, That I believe, That it is not lawful upon any Pretence whatsoever, to take Arms against the King; and that I do Abhor that Traiterous Position of taking Arms by His Authority against His Person, or against those that are Commissioned by Him. *So help me God.*

## ART. VII.

No Officer or Soldier shall use any Traiterous Words against the Sacred Person of the King's Most Excellent Majesty upon Pain of Death.

## ART. VIII.

Whosoever shall hold correspondence with any Rebel or Enemy of His Majesty, or shall give them Advice or Intelligence either by Letters, Messages, Signs, or Tokens, or in any manner of way whatsoever, shall suffer Death. And whatever Regiment, Troop, or Company shall Treat with such Rebels or Enemies, or enter into any Condition with them without His Majesties Leave, or Leave of the General, Lieutenant General, or of the Chief Commander in his absence; and the officers of such Regiment, Troop, or Company who are found guilty shall die for it; and of the Soldiers who shall consent thereunto, every tenth Man by Lot shall be Hanged, and the rest punished at the Discretion of the General Court-Martial; But whatsoever Officers or Soldiers can prove that they did their utmost to resist and avoid such a Treaty, and were no Partakers of the Crime, they shall not only go free, but shall also be Rewarded for thier Constancy and Fidelity.

## ART. IX.

Whosoever shall go about to Entice or Persuade either Officer or Soldier to join or engage in any Traiterous or Rebellious Act, either against the Royal Person of the King or Kingly Government, shall suffer Death

for it; And whoever shall not reveal to his Superior Officer such a conspiracy so soon as ever it shall come to his knowledge, shall be judged equally guilty with the Contrivers of such a Plot or Conspiracy, and consequently shall suffer the same Penalty.

ART. X.

If any Officer or Soldier shall behave himself disrespectfully towards the General, Lieutenant General, or other Chief Commander of the Army, or speak words tending to his Hurt or Dishonor, he shall be punished according to the Nature and Quality of the Offence by the Judgement of the General Court-Martial.

ART. XI.

Whosoever shall presume in the Presence of the General, Lieutenant General, or other Commander in Chief, to draw his Sword with a purpose to do any Officer, or any of his fellow Soldiers mischief, shall suffer such Punishment as a Court-Martial shall think fit to inflict upon him for the said Offence.

ART. XII.

Whoever shall presume to violate any Safe Conduct or Protection given by His Majesty, the General, Lieutenant General, or other Commander in Chief (knowing the same) shall suffer Death, or such other punishment as shall be inflicted on him by the General Court-Martial.

ART. XIII.

No Man shall presume so far as to raise or cause the least Mutiny or Sedition in the Army, upon Pain of Death, or such other Punishment as a Court-Martial shall think fit. And if any number of Soldiers shall presume to assemble to take Council amongst themselves for the demanding their Pay, any Inferior Officers accessory thereunto, shall suffer Death for it, as the Heads and Ring-leaders of such Mutinous and Seditious Meetings; And the Soldiers shall be punished either with death or otherwise at the Discretion of the General Court-Martial: And if any Captain being privy thereunto shall not suppress the same, or complain of it, he shall likewise be punished with Death, or such other Punishment as the General Court-Martial shall think fit.

ART. XIV.

No Officer or Soldier shall utter any words tending to Sedition or Mutiny upon pain of suffering such Punishment as shall be inflicted on him by a Court-Martial.

And whosoever shall hear any Mutinous or Seditious Words spoken, and shall not with all possible speed reveal the same to his Superiour Officers, shall be punished as a Court-Martial shall think fit.

ART. XV.

If any Inferior Officer or Soldier shall refuse to obey his Superior Officer, or shall quarrel with him, he shall be Cashiered, or suffer such Punishment as a Court-Martial shall think fit.

But if any Officer or Soldier shall presume to resist any Officer in the Execution of his Office, or shall strike, or lift up his hand to strike, or shall draw, or offer to draw, or lift up any Weapon against his Superior Officer upon any pretence whatsoever, he shall suffer Death, or such other Punishment as the General Court-Martial shall think fit.

## ART. XVI.

Every Soldier shall keep silence when the Army is Marching, Embattelling, or taking up their Quarters, (to the end that their Officers may be heard, and their Orders executed) upon Pain of Imprisonment, or such other Punishment as a Court-Martial shall think fit, according to the Circumstance and Aggravation of the Fact.

## ART. XVII.

All murders and wilful killing of any Person, shall be punished with Death.

## ART. XVIII.

All Robbery and Theft committed by any Person in or belonging to the Army, shall be punished with Death, or otherwise as the Court-Martial upon consideration of the Circumstances shall think fit.

## ART. XIX.

Whoever shall in danger draw his Sword whilst his Colours are flying, either in Battel, or upon the March, unless it be against the enemy, shall suffer such Punishment as a Court-Martial shall think fit.

## ART. XX.

When any March is to be made, every Man who is sworn shall follow his Colours ; and whoever shall without leave stay behind, or depart above a Mile from the Camp, or out of the Army without Licence, shall suffer such Punishment as shall be inflicted on him by a Court-Martial.

## ART. XXI.

No person shall extort Free quarter, or shall commit any Waste, or spoil or deface Walks of Trees, Parks, Warrens, Fishponds. Houses, or Gardens, tread down, or otherwise destroy Standing Corn in the Ear, or shall put their Horses into Medows without Leave from their Superior Officer, upon pain of severe Punishment ; But if any Officer or Soldier shall exact Money, or wilfully Burn any House, Barn, Stack of Corn, Hay or Straw, or any Ship, Boat or Carriage, or anything which may serve for the Provision of the Army, without Order from the Commander in Chief, he shall suffer Death for it.

## ART. XXII.

Whoever shall run from his Colours, or doth not defend them to the utmost of his Power, shall suffer Death.

## ART. XXIII.

If any Officers or Soldiers, Regiment, Troop, or Company, or Commanded Party, shall not behave themselves in Fight against an Enemy as they ought to do, they shall suffer such Punishment as the General Court-Martial shall inflict.

## ART. XXIV.

When it shall please God that his Majesty's Forces shall beat the Rebels, or Enemy, every Man shall follow his Officer in the Chase; but whoever shall presume to Pillage or Plunder till the Rebels, or Enemy be entirely beaten, he shall suffer Death, or such other Punishment as shall be pronounced against him by the General Court-Martial; and the Pillage so gotten shall be forfeited to the use of the sick and maimed Soldiers.

## ART. XXV.

In What Place soever it shall please God that the Rebels or Enemy shall be subdued or overcome, all the Ordnance, Ammunition and Victuals that shall be there found, shall be secured to his Majesties use, and for the better Relief of the Army; and one tenth part of the Spoil shall be laid apart towards the Relief of the sick and maimed Soldiers.

## ART. XXVI.

All Officers whose Charge it is shall see the Quarters kept clean and neat upon pain of severe Punishment.

## ART. XXVII.

No Officer shall lie out all Night from the Camp or Garison without his Superior Officer's Leave; upon pain of being punished for it as a Court-Martial shall think fit; Nor shall any Soldier or Officer go any By-way to the Camp, or other than the Common Way laid out for all, upon pain of being punished as aforesaid.

## ART. XXVIII.

No Soldier shall presume to make any alarm in the Quarters by shooting off his Musket in the Night after the Watch is Set, unless it be at an Enemy; upon pain of suffering such Punishment as a Court-Martial shall inflict.

## ART. XXIX.

No Soldier shall in anger draw his Sword in any Camp, Post, or Garison, upon pain of suffering such Punishment as a Court-Martial shall inflict upon him for the same.

## ART. XXX.

When warning is given for Setting the Watch, by Beat of Drum, or Sound of Trumpet, if any Soldier shall Absent himself without reasonable Cause, he shall be punished by Riding the Wooden Horse, or otherwise at the Discretion of the Commander.

And whoever shall fail at the Beating of a Drum, or sound of a Trum-



pet, or upon an Alarm given, to repair to his Colours, with his Arms decently kept, and well fixed (unless there be an evident necessity to hinder him from the same) he shall either be put in Irons for it, or suffer such other Punishment as a Court-Martial shall think fit.

## ART. XXXI.

Whoever makes known the Watchword without Order, or gives any other Word but what is given by the Officer, shall suffer Death, or such other Punishment as the General Court-Martial shall think fit.

## ART. XXXII.

A Centinel who shall be found sleeping in any Post, Garrison, Trench, or the like, (while he should be upon his Duty) shall suffer Death, or such other Punishment as the General Court-Martial shall inflict for the same.

And if a Centinel or Perdue shall forsake his Place, before he be relieved or drawn off; or upon discovery of an Enemy, shall not give Warning to his Quarters, according to Direction, he shall suffer Death, or such other Punishment as the General Court-Martial shall think fit.

And if any Soldier employed as a Scout, shall not go upon that Service so far as he is commanded, or having discovered an Ambush, or Approach of the Enemy, shall not return forthwith to give Notice or Warning to his Quarters; or if he enter into any House, and there or elsewhere be found sleeping or drunk, whilst he should have been upon Service, he shall suffer Death, or such other Punishment as shall be inflicted upon him by the General Court-Martial.

## ART. XXXIII.

Whoever shall do violence to any who shall bring Victuals to the Camp or Garrison, or shall take his Horse or Goods, shall suffer Death, or such other Punishment as the General Court-Martial shall inflict.

If any shall presume to beat or abuse his Host, or the Wife, Child, or Servant of his Host, where he is Quartered, he shall be put in Irons for it: And if he do it a second time, he shall be further punished; and the Party wronged shall in both Cases have amends made him.

And whoever shall force a Woman to abuse her (whether she belong to the Enemy, or not) and the fact be sufficiently proved, shall suffer Death for it.

## ART. XXXIV.

No Soldier or Officer shall use any reproachful or provoking Speech or Act to another upon pain of Imprisonment, and such further Punishment as a Court-Martial shall think fit.

Nor shall any Officer or Soldier presume to send a Challenge to any other Officer or Soldier to fight a Duel; neither shall any Soldier or Officer upbraid another for refusing a Challenge; And we do acquit and discharge all Men that have Quarrels offered, or Challenges made to them, of all Disgrace, or opinion of Disadvantage, since they but do the Duties of Soldiers, who ought to subject themselves to Discipline; and they that provoke them, shall be proceeded against as Breakers of Discipline, and Enemies to Our Service: And whoever shall offend in either of these Cases, if he be an Officer, he shall be Cashiered; and if a pri-

vate Soldier, he shall Ride the Wooden Horse, and be further punished as a Court-Martial shall think fit. And if any Corporal or other Officer Commanding a Guard, shall willingly or knowingly suffer either Soldiers or Officers to go forth to a Duel, he shall be punished for it by the Sentence of a Court-Martial.

And all Officers of what Condition soever, have power to part and quell all Quarrels, Frays, or sudden Disorders between Soldiers and Officers, tho' of another Company, Troop or Regiment, and to commit the disorderly Persons to Prison, until their proper Officers be acquainted therewith.

Whoever shall resist such an Officer (though of another Company, Troop, or Regiment) or draw his Sword upon him, shall be severely punished as the General Court-Martial shall appoint.

And if two or more going into the Field to Fight a Duel, shall draw their Swords or other Weapons and Fight, though neither of them fall upon the Spot, nor die afterwards of any Wound there received, yet if they be Officers, they shall be cashiered; and if common Soldiers, they shall be punished with Riding the Wooden Horse, or suffer such other Punishment as a Court-Martial shall direct.

And lastly, in all Cases of Duels, the Seconds, and Carriers of Challenges, shall be taken as Principals, and punished accordingly.

#### ART. XXXV.

All Passes and Licences for being absent, shall be brought to the Muster-Master, who is required to enter the same in a Book fairly written, to prevent Collusion; And whoever is absent longer than the time limited in his Pass for his absence, shall be respited, and not allowed the Muster, without order from his Majesty, the General, or other Commander in Chief of his Majesties Forces.

#### ART. XXXVI.

If any Soldier be sick, wounded, or maimed in his Majesties Service, he shall be sent out of the Camp to some fit Place for his Recovery, where he shall be provided for by the Officer appointed to take care of sick and wounded Soldiers, and his Wages or Pay shall go on and be duly paid till it do's appear that he can be no longer serviceable in the Army, and then he shall be sent by Pass to his Countrey, with Money to bear his Charges in his Travel, or such other Provision shall be made for him, as his Majesty shall direct.

#### ART. XXXVII.

All Commissions granted by his Majesty, the General, or Commander in Chief of his Majesties Forces, to any Officer in Pay, shall be brought to the Commissary of the Musters, and Secretary at War, who are to receive and Enter the same in a Book fairly written; and no Commission-officer shall be allowed in Muster, without a Commission from his Majesty, or the Commander in Chief for the time being, and the same Entered with the Commissary-General of the Musters, or his Deputies, and Secretary at War.

#### ART. XXXVIII.

No Commission Officer after Enrollment and being Mustered, shall be

Dismissed or Cashiered without order from his Majesty, the General or Commander in Chief for the time being, or a General Court-Martial: But the Captains with the approbation of their Colonels, or of the Governour of the Garison where they are, may discharge any Non-Commission Officer, or Private Soldier when they find cause, taking other Non-Commission Officers or Soldiers in their Places; Provided that such Colonel or Governour shall forthwith certifie the Commissary General of the Musters, That (by their approbation) such Non-Commission Officers or Soldiers were discharged, and others taken into their Places respectively. And in Quarters and Garisons where they are only single Troops or Companies, the Captains certificates are forthwith to be sent and accepted by the Commissary-General, expressing the Day of each Non-Commission Officers or Soldiers Discharge or Death, and who has been entertained in his Place.

## ART. XXXIX.

All Captains shall use their utmost Endeavours to have their Troops and Companies compleat and full, and no Soldiers Duty, either of Horse or Foot, shall be done by any other than the Soldier himself; But in case of Sickness or Disability, or other necessary Cause, his Captain may dispence with his absence, without obliging him to find another to Serve in his stead.

## ART. XL.

If any Trooper or Dragoon shall lose or spoil his Horse, or any Foot Soldier his Arms, or any part thereof by Negligence or Gaming, he shall remain in the quality of a Pioneer or Scavenger, till he be furnished at his own Charge, with as good as were lost; and if he be not otherwise able, the one half of his Pay shall be deducted and set apart for the providing of it till he be re-furnished.

Nor shall any Soldier sell, or negligently or wilfully break his Arms, or any part thereof, or any Hatchets, Spades, Shovels, Pick-axes, or other Necessaries of War, upon pain of severe punishment, at the discretion of the General Court-Martial. And where Arms, or other Necessaries aforesaid shall be pawned, they are to be forfeited, and seized on for his Majesties use.

## ART. XLI.

All Officers and Soldiers, and also the Muster-Masters, not duly observing these Orders and Instructions, and every of them respectively, shall be Cashiered, or liable to such other Punishments as his Majesty, or Commander in Chief of the Forces, or a Court-Martial shall appoint.

## ART. XLII.

None shall presume to spoil, sell, or convey away any Ammunition delivered unto him, upon pain of suffering death, or such other punishment as the General Court-Martial shall think fit.

## ART. XLIII.

No Officer, Provider or Keeper of the Victuals or Ammunition for his Majesties Forces shall imbezel or willingly spoil or give a false Account of any part thereof to whom he is to make his Account, upon

pain of suffering Death, or such other Punishment as the General Court-Martial shall think fit.

ART. XLIV.

No Commissary or Victualler shall bring or furnish unto the Camp any unsound or unsavory Victuals of what kind soever, whereby sickness may grow in the Army, or the Service be hindred; and if upon Examination before the General Court-Martial he shall be found guilty, he shall suffer such Punishment as they shall direct.

ART. XLV.

No Officer or Soldier shall be a Victualler in the Army upon pain of being punished at discretion.

ART. XLVI.

No Victualler or seller of Beer, Ale, or Wine belonging to the Army, shall Entertain any Soldier in his House, Booth, Tent or Hutt after the Warning-Piece, Tattoo or Beat of the Drum at night, or before the Beating of the Reveilles in the morning; Nor shall any Soldier within that time be any where but upon his Duty, or in his Quarters, upon pain of Punishment both to the Soldier and Entertainer, at the Discretion of a Court-Martial.

ART. XLVII.

The Commission-Officers of every Regiment may hold a Court-Martial for that Regiment upon all necessary Occasions.

The Provost-Martial of every Regiment shall have the same priviledge in his own Regiment as the Provost-Martial General hath in the Army or Camp, and such Fees also as the Court-Martial shall allow.

ART. XLVIII.

Such who are Judges in a General Court-Martial or in a Regimental Court-Martial, shall hold the same Rank in those Courts as they do in the Army for Orders sake, and they shall take an Oath for the due Administration of Justice according to these Articles, or (where these Articles do not assign any special Punishment) according to their consciences, the best of their Understandings, and the Custom of War in the like Cases; and shall demean themselves orderly in the hearing of Causes, and before giving of Sentence every Judge shall deliver his Vote or Opinion distinctly, and the Sentence is to be according to the plurality of Votes, and if there happen to be an equality of Votes, the President is to have a casting Voice.

And when Sentence is to be given, the President shall pronounce it; and after that the Sentence is pronounced the Provost-Martial shall have Warrant to cause Execution to be done according to Sentence.

ART. XLIX.

At a General Court-Martial there shall be a Clerk who is to be sworn to make true and faithful Records of all the Proceedings of that Court, and there shall be also such other Officers appointed both for that, and

also for the Regimental Court-Martial as shall be necessary; and the General Court-Martial may appoint and limit the Fees of the Provost-Martial-General as they shall think fit.

## ART. L.

All controversies either between Soldiers and their Captains or other Officers, or between Soldier and Soldier relating to their Military Capacities, shall be summarily heard and determined at the next Court-Martial of the Regiment.

## ART. LI.

If in any Matter which shall be Judged in any of the aforesaid Regimental Courts-Martial either of the Parties shall find himself aggrieved, he may appeal to the General Court-Martial, who are to take care that if the Party appealing make not good his Suggestion, Recompence be made to the other for the trouble and Charge of such an Appeal.

## ART. LII.

In all Criminal Causes which concern the Crown, His Majesties Advocate-General or Judge-Advocate of the Army, shall inform the Court and prosecute on his Majesties behalf.

## ART. LIII.

No Officers or Soldiers shall presume to hinder the Provost-Martial, his Lieutenant or Servant in the Execution of their Office upon pain of Death or such other Punishment as a Court-Martial shall think fit; And all Captains, Officers and Soldiers shall do their utmost to apprehend and bring to punishment all Offenders, and shall assist the Officers of His Majesties Army or Forces therein, especially the said Provost-Martial, His Lieutenant and Servants; and if the Provost-Martial or his Officers require the assistance of any Officer or Soldier in apprehending any Person, declaring to them that it is for a Capital Crime, and the Party escape for want of Aid and Assistance, the Party or Parties refusing to Aid or Assist shall suffer such Punishment as a Court-Martial shall inflict.

## ART. LIV.

If any Officer or Soldier who shall presume to draw his Sword in any place of judicature while the Court is sitting, he shall suffer such punishment as shall be inflicted on him by a Court-Martial. And the Provost-Martial of his Majesties Army is hereby empowered and directed by his own authority to apprehend such Offenders.

## ART. LV.

If any Soldier being committed for any Offence shall break Prison, the said Provost-Martial-General shall by his own Authority apprehend him, and the Offender shall suffer Death.

## ART. LVI.

If any Fray shall happen within the Camp or place of Garison in any of the Soldiers Lodgings, or where they meet, it shall be inquired into by

the Officers of the Regiment, and the Beginners and pursuers thereof punished according to the quality of the Offence.

#### ART. LVII.

If any Inferiour Officer either of Horse or Foot, be wronged by his Officer, he may complain to his Colonel, or other Superiour Officer of the Regiment, who is to redress the same upon due Proof made of the Wrong done him: But if he fail therein, the Party grieved is to apply to the General Officer for redress; And if the Accusation be false, the Complainant is to be punished at the discretion of a Court-Martial.

#### ART. LVIII.

If any Colonel or Captain shall force or take any thing away from a private Soldier, such Colonel or Captain shall be punished according to the quality of the Offence, by the Judgment of a General Court-Martial.

And if a Soldier shall be wronged, and shall not appeal to the Court, or his Superiour Commander, but take his own Satisfaction for it, he shall be punished by the Judgment of a Court-Martial.

#### ART. LIX.

If any Soldier die, no other shall take or spoil his Goods, upon pain of restoring double the value to him to whom they belong, and of such further Punishments as a Court-Martial shall think fit. But the Captain of the Company of which such a Soldier was, shall take the said Goods into his custody, and dispose of them for paying his Quarters, and to keep the overplus (if any be) for the use of those to whom they belong, and who shall claim the same within Three months after his Death.

And if any Captain or Officer die the Chief Commander shall take care of reserving his Estate in like manner.

#### ART. LX.

No Provost-Martial shall refuse to receive or keep a Prisoner committed to his Charge by Authority, or shall dismiss him without Order, upon pain of such Punishment as a Court-Martial shall think fit.

And if the Offence for which the Prisoner was apprehended deserv'd Death, the Provost-Martial failing to receive and keep him as aforesaid shall be liable to the same Punishment.

#### ART. LXI.

If any Person be committed by the Provost-Martial's own Authority without other Command, he shall acquaint the General or other Chief Commander with the Cause within twenty-four hours, and the Provost-Martial shall thereupon dismiss him unless he have Order to the contrary.

#### ART. LXII.

No man shall presume to use any Braving or Menacing Words, Signs or Gestures where any of the aforesaid Courts of Justice are sitting, upon pain of suffering such Punishment as the Court-Martial shall think fit.

## ART. LXIII.

Whatever is to be Published or generally made known, shall be done by Beat of Drum, or the sound of Trumpet, That no man may pretend Ignorance thereof: And if afterwards any one shall be found disobedient or transgressing what is so Published, he shall be punished according to these Articles, or the quality of the Fact.

## ART. LXIV.

All other faults, misdemeanours and Disorders not mentioned in these Articles, shall be punished according to the Laws and Customs of War, and discretion of the Court-Martial; Provided that no Punishment amounting to the loss of Life or Limb, be inflicted upon any Offender in time of Peace, although the same be allotted for the said Offence by these Articles, and the Laws and Customs of War.

## VI.

## THE FIRST BRITISH MUTINY ACT. (1689.)

An Act for punishing Officers or Soldiers who shall Mutiny or Desert their Majestyes Service.

Whereas, the raising or keeping a standing Army within this Kingdome in time of peace unlesse it be with consent of Parlyament is against Law. And whereas it is judged necessary by their Majestyes and this present Parlyament That durement this time of Danger severall of the Forces which are now on foote should be continued and others raised for the Safety of the Kingdome for the common defence of the Protestant Religion and for the reduceing of Ireland.

And whereas noe man may be forejudged of Life or Limbe, or subjected to any Kinde of punishment by Martiall Law, or in any other manner than by the judgement of his Peeres, and according to the Knowne and Established Laws of this Realme. Yet nevertheless, it being requisite for retaineing such Forces as are or shall be raised durement this exigence of Affaires in their Duty an exact Discipline be observed. And that Soldiers who shall Mutiny or Stirr up Sedition, or shall desert Their Majestyes Service be brought to a more exemplary and speedy Punishment than the usuall forms of Law will allow:

Be it therefore Enacted by the King and Queenes most Excellent Majestyes by and with the Advice and Consent of the Lords Spirituall and Temporall and Commons in this present Parlyament assembled, and by authoritie of the same. That from and after the Twelfth day of Aprill in the yeare of our Lord One thousand six hundred eighty-nine every person being in Their Majestyes Service in the Army, and being mustered and in pay as an Officer or Soldier who shall at any time before the Tenth day of November in the yeare of our Lord One thousand six hundred eighty-nine, excite, cause, or joyne in any mutiny or sedition in the Army, or shall desert Their Majestyes Service in the Army, shall suffer death or such other punishment as by a Court Martiall shall be inflicted.

3. And it is hereby further enacted and declared, That Their Majestyes, or the Generall of their Army for the time being, may by vertue of this Act have full power and authoritie to grant Commissions to any Lieutenants, Generall or other Officers, not under the degree of Collonels, from time to time to call and assemble Court-Martials for punishing such offences as aforesaid.

4. And it is hereby further enacted and declared, That noe Court-Martiall which shall have power to inflict any punishment by vertue of this Act for the offences aforesaid shall consist of fewer than thirteene, whereof none to be under the degree of Captaines.

5. Provided alwayes, That no field Officer be tryed by other than field Officers. And that such Court Martiall shall have power and authoritie to administer an oath to any witness in order to the examination or tryall of the offences aforesaid.



6. Provided alwayes, That nothing in this Act contained shall extend or be construed to exempt any officer or soldier whatsoever from the ordinary processe of Law.

7. Provided alwayes, That this Act, or anything therein contained shall not extend or be any wayes construed to extend to or concerne any of the Militia Forces of this Kingdome.

8. Provided alsoe, That this Act shall continue and be in force untill the said Tenth day of November in the said yeare of our Lord One thousand six hundred eighty-nine and noe longer.

9. Provided alwayes, and bee it enacted, That in all tryalls of offenders by Courts Martiall to be held by vertue of this Act, where the offence may be punished by Death, every Officer present at such tryall, before any proceeding be had thereupon, shall take an oath upon the Evangelists before the Court (and the Judge Advocate or his Deputy shall, and are hereby respectively authorized to administer the same) in these words, that is to say:—

‘You shall well and truly try and determine according to your evidence the matter now before you between Our Sovereigne Lord and Lady the King and Queene’s Majestyes and the Prisoner to be tried.

‘So helpe you God.’

10. And noe Sentence of Death shall be given against any offender in such case by any Court Martiall unlesse nine of thirteene Officers present shall concur therein. And if there be a greater number of Officers present, then the judgement shall passe by the concurrence of the greater part of them soe sworne, and not otherwise; and noe Proceedings, Tryall, or Sentence of Death shall be had or given against any Offender, but betweene the houres of eight in the morning and one in the after-noone.

## VII.

BRITISH ARTICLES OF WAR OF 1765, IN FORCE AT  
THE BEGINNING OF OUR REVOLU-  
TIONARY WAR.

## RULES AND ARTICLES

*For the better Government of our Horse and Foot Guards, and all other  
Our Forces in Our Kingdoms of Great Britain and Ireland, Do-  
minions beyond the Seas, and Foreign Parts.*

SECTION I.—*Divine Worship.*

GEORGE R.

## ART. I.

All Officers and Soldiers, not having just Impediment, shall diligently frequent Divine Service and Sermon, in the Places appointed for the assembling of the Regiment, Troop, or Company, to which they belong; such as wilfully absent themselves, or, being present, behave indecently or irreverently, shall, if Commissioned Officers, be brought before a Court-martial, there to be publicly and severely reprimanded by the President; if Non-commissioned Officers, or Soldiers, every Person so offending shall, for his First Offence, forfeit Twelve Pence, to be deducted out of his next pay; for the Second Offence, he shall not only forfeit Twelve Pence, but be laid in Irons for Twelve Hours; and for every like Offence, shall suffer and pay in like Manner: Which Money so forfeited, shall be applied to the Use of the sick Soldiers of the Troop or Company to which the Offender belongs.

## ART. II.

Whatsoever Officer or Soldier shall use any unlawful Oath or Execration, shall incur the Penalties expressed in the First Article.

## ART. III.

Whatsoever Officer or Soldier shall presume to speak against any known Article of the Christian Faith, shall be delivered over to the Civil Magistrate, to be proceeded against according to Law.

## ART. IV.

Whatsoever Officer or Soldier shall profane any Place dedicated to Divine Worship, or shall offer Violence to a Chaplain of the Army, or to any other Minister of God's Word; he shall be liable to such Penalty, or corporal Punishment as shall be inflicted on him by a Court-martial.

## ART. V.

No Chaplain who is commissioned to a Regiment, Company, Troop, or Garrison, shall absent himself from the said Regiment, Company, Troop, or Garrison (excepting in case of Sickness or Leave of Absence) upon Pain of being brought to a Court-martial, and punished as their Judgment and the Circumstances of his Offence may require.

## ART. VI.

Whatsoever Chaplain to a Regiment, Troop, or Garrison, shall be guilty of Drunkenness, or of other scandalous or vicious Behaviour, derogating from the Sacred Character with which he is invested, shall, upon due Proofs before a Court-martial, be discharged from his said Office.

SECTION II.—*Mutiny.*

## ART. I.

Whatsoever Officer or Soldier shall presume to use traiterous or disrespectful Words against the Sacred Person of his Majesty, or any of the Royal Family; if a Commissioned Officer, he shall be cashiered; if a Non-commissioned Officer or Soldier, he shall suffer such Punishment as shall be inflicted upon him by the Sentence of a Court-martial.

## ART. II.

Any Officer or Soldier who shall behave himself with Contempt or Disrespect towards the General, or other Commander in Chief of Our Forces, or shall speak Words tending to his Hurt or Dishonour, shall be punished according to the Nature of his Offence, by the Judgment of a Court-martial.

## ART. III.

Any Officer or Soldier who shall begin, excite, cause, or join in, any Mutiny or Sedition, in the Troop, Company or Regiment, to which he belongs, or in any other Troop or Company in Our Service, or in any Party, Post, Detachment, or Guard, on any Pretence whatsoever, shall suffer Death, or such other Punishment as by a Court-martial shall be inflicted.

## ART. IV.

Any Officer, Non-commissioned Officer, or Soldier, who being present at any Mutiny or Sedition, does not use his utmost Endeavour to suppress the same, or coming to the Knowledge of any Mutiny or intended Mutiny, does not without Delay give Information thereof to his Commanding Officer, shall be punished by a Court-martial with Death, or otherwise, according to the Nature of the Offence.

## ART. V.

Any Officer or Soldier, who shall strike his superiour Officer, or draw, or offer to draw, or shall lift up any Weapon, or offer any Violence

against him, being in the Execution of his Office, on any Pretence whatsoever, or shall disobey any lawful Command of his superior Officer, shall suffer Death, or such other Punishment as shall, according to the Nature of his Offence, be inflicted upon him by the Sentence of a Court-martial.

### SECTION III.—*Of Inlisting Soldiers.*

#### ART. I.

Every Non-commissioned Officer and Soldier, who shall inlist himself in Our Service, shall, at the Time of his so Inlisting, or within Four Days afterwards, have the Articles against Mutiny and Desertion read to him, and shall, by the Officer who inlisted him, or by the Commanding Officer of the Troop or Company into which he was inlisted, be taken before the next Justice of the Peace, or Chief Magistrate of any City or Town Corporate (not being an Officer of the Army) or in Foreign Parts, where Recourse cannot be had to the Civil Magistrate, before the Judge Advocate, and in his presence shall take the following Oath :

*I Swear to be true to our Sovereign Lord King GEORGE, and to serve him honestly and faithfully, in Defence of his Person, Crown, and Dignity, against all His Enemies or Opposers whatsoever : And to observe and obey His Majesty's Orders, and the Orders of the Generals and Officers set over me by his Majesty.*

Which Justice or Magistrate is to give the Officer a Certificate signifying that the Man inlisted did take the said Oath, and that the Articles of War were read to him, according to the Act of Parliament.

#### ART. II.

After a Non-commissioned Officer or Soldier shall have been duly inlisted and sworn, he shall not be dismissed Our Service without a Discharge in Writing; and no Discharge granted to him shall be allowed of as sufficient, which is not signed by a Field Officer of the Regiment into which he was inlisted; or Commanding Officer, where no Field Officer of the Regiment is in *Great Britain*.

### SECTION IV.—*Musters.*

#### ART. I.

Every Officer commanding a Regiment, Troop, or Company, shall, upon the Notice given to him by the Commissary of the Musters, or from One of his Deputies, assemble the Regiment, Troop, or Company under his Command, in the next convenient place for their being mustered.

#### ART. II.

Every Colonel or other Field Officer commanding the Regiment, Troop, or Company, and actually residing with it, may give Furloughs to non-commissioned Officers and Soldiers, in such Numbers, and for so long a Time, as he shall judge to be most consistent with the Good of Our Service; but no Non-commissioned Officer or Soldier shall by Leave of his Captain, or inferior Officer commanding the Troop or Com-

pany (his Field Officer not being present) be absent above Twenty Days in Six Months, nor shall more than Two private Men be absent at the same Time from their Troop or Company, excepting some extraordinary Occasion shall require it, of which Occasion the Field Officer present with, and commanding the Regiment, is to be the Judge.

## ART. III.

At every Muster the Commanding Officer of each Regiment, Troop, or Company there present, shall give to the Commissary Certificates signed by himself, signifying how long such Officers who shall not appear at the said Muster have been absent, and the Reason of their Absence; in like Manner the Commanding Officer of every Troop or Company shall give Certificates, signifying the Reasons of the Absence of the Non-commissioned Officers and private Soldiers; which Reasons and Time of Absence shall be inserted in the Muster-rolls opposite to the Names of the respective absent Officers and Soldiers: The said Certificates shall, together with the Muster-rolls, be remitted to Our Commissary's Office within Twenty Days after such Muster being taken; on the Failure thereof, the Commissary so offending shall be discharged from Our Service.

## ART. IV.

Every Officer who shall be convicted before a General Court-martial of having signed a false Certificate, relating to the Absence of either Officer or private Soldier, shall be cashiered.

## ART. V.

Every Officer who shall knowingly make a false Muster of Man or Horse, and every Officer or Commissary who shall willingly sign, direct, or allow the signing of the Muster-rolls, wherein such false Muster is contained, shall, upon Proof made thereof by Two Witnesses before a General Court-Martial, be cashiered, and suffer such other Penalty as by the Act of Parliament is for that Purpose inflicted.

## ART. VI.

Any Commissary who shall be convicted of having taken Money by way of Gratification on the mustering any Regiment, Troop, or Company, or on the signing the Muster-rolls, shall be displaced from his Office, and suffer such other Penalty as by the Act of Parliament is inflicted.

## ART. VII.

Any Officer who shall presume to muster any Person as a Soldier, who is at other Times accustomed to wear a Livery, or who does not actually do his duty as a Soldier, shall be deemed guilty of having made a false Muster, and shall suffer accordingly.

## SECTION V.—Returns.

## ART. I.

Every Officer who shall knowingly make a false Return to Us, to the

Commander in Chief of our Forces, or to any his superior Officer authorized to call for such Returns, of the State of the Regiment, Troop, or Company, or Garrison, under his Command, or of Arms, Ammunition, Clothing, or other Stores thereunto belonging, shall by a Court-martial be cashiered.

## ART. II.

The Commanding Officer of every Regiment, Troop, or Independent Company, or Garrison in *South Britain*, shall, in the Beginning of every Month, remit to the Commander in Chief of Our Forces, and to Our Secretary at War, an exact Return of the State of the Regiment, Troop, Independent Company, or Garrison under his Command, specifying the Names of the Officers not then residing at their Posts, and the Reason for, and Time of, their Absence : Whoever shall be convicted of having, through Neglect or Design, omitted the sending such Returns, shall be punished according to the Nature of his Crime by the Judgment of a General Court-martial.

## ART. III.

Returns shall be made in like Manner of the State of Our Forces in Our Kingdom of *Ireland*,\* to the Chief Governor or Governors thereof, as likewise of Our Forces in *North Britain*, to the Officer there commanding in Chief ; which Returns shall from time to time be remitted to Us, as it shall be best for Our Service.

## ART. IV.

It is Our Pleasure, That exact Returns of the State of Our Garrisons at *Gibraltar* and *Port Mahon*, and of Our Regiments, Garrisons, and Independent Companies in *America*, be by their respective Governors or Commanders there residing, by all convenient Opportunities, remitted to Our Secretary at War, for their being laid before Us.

SECTION VI.—*Desertion.*

## ART. I.

All Officers and Soldiers, who having received Pay, or having been duly inlisted in Our Service, shall be convicted of having deserted the same, shall suffer Death, or such other Punishment as by a Court-martial shall be inflicted.

## ART. II.

Any Non-commissioned Officer or Soldier, who shall, without Leave from his Commanding Officer, absent himself from his Troop or Company, or from any Detachment with which he shall be commanded, shall, upon being convicted thereof, be punished according to the Nature of his Offence at the Discretion of a Court-martial.

## ART. III.

No Non-commissioned Officer or Soldier shall inlist himself in any other Regiment, Troop, or Company, without a regular Discharge from the Regiment, Troop, or Company, in which he last served, on the Penalty of being reputed a Deserter, and suffering accordingly : And in case

any officer shall knowingly receive and entertain such Non-commissioned Officer or Soldier, or shall not, after his being discovered to be a Deserter, immediately confine him, and give Notice thereof to the Corps in which he last served, he the said Officer so offending shall by a Court-martial be cashiered.

## ART. IV.

Whatsoever Officer or Soldier shall be convicted of having advised or persuaded any other Officer or Soldier to desert Our Service, shall suffer such Punishment as shall be inflicted upon him by the Sentence of a Court-martial.

SECTION VII.—*Quarrels and Sending Challenges.*

## ART. I.

No Officer or Soldier shall use any reproachful or provoking Speeches or Gestures to another, upon Pain, if an Officer, of being put in Arrest; if a Soldier, imprisoned, and of asking Pardon of the Party offended, in the Presence of his Commanding Officer.

## ART. II.

No Officer or Soldier shall presume to send a Challenge to any other Officer or Soldier, to fight a duel, upon Pain, if a Commissioned Officer, of being cashiered; if a Non-commissioned Officer, or Soldier, of suffering corporal Punishment, at the Discretion of a Court-martial.

## ART. III.

If any Commissioned or Non-commissioned Officer commanding a Guard shall knowingly and willingly suffer any Person whatsoever to go forth to fight a Duel, he shall be punished as a Challenger: And likewise all Seconds, Promoters, and Carriers of Challenges, in order to Duels, shall be deemed as Principals, and be punished accordingly.

## ART. IV.

All Officers, of what Condition soever, have power to part and quell all Quarrels, Frays, and Disorders, though the Persons concerned should belong to another Regiment, Troop, or Company; and either to order Officers into Arrest, or Non-commissioned Officers or Soldiers to Prison, till their proper superior Officers shall be acquainted therewith; and whosoever shall refuse to obey such Officer (though of an inferior Rank) or shall draw his Sword upon him, shall be punished at the discretion of a General Court-martial.

## ART. V.

Whatsoever Officer or Soldier shall upbraid another for refusing a Challenge, shall himself be punished as a Challenger; and We hereby acquit and discharge all Officers and Soldiers of any Disgrace, or Opinion of Disadvantage, which might arise from their having refused to accept of Challenges, as they will have only acted in Obedience to Our Orders, and done their Duty as good Soldiers, who subject themselves to Discipline.

SECTION VIII.—*Suttlng.*

## ART. I.

No Suttler shall be permitted to sell any Kind of Liquors or Victuals, or to keep their Houses or Shops open, for the Entertainment of Soldiers, after Nine at Night, or before the Beating of the Reveilles, or upon *Sundays*, during Divine Service or Sermon, on the Penalty of being dismissed from all future Suttlng.

## ART. II.

All Officers, Soldiers, and Suttlers, shall have full Liberty to bring into any of Our Forts or Garrisons, any Quantity or Species of Provisions, eatable or drinkable, except where any Contract or Contracts are or shall be entered into by Us, or by Our Order, for furnishing such Provisions, and with respect only to the Species of Provisions so contracted for.

## ART. III.

All Governors, Lieutenant Governors, and Officers commanding in Our Forts, Barracks, or Garrisons, are hereby required to see, that the Persons permitted to Suttle shall supply the Soldiers with good and wholesome Provisions at the Market Price, as they shall be answerable to Us for their Neglect.

## ART. IV.

No Governors, or Officers, commanding in any of Our Garrisons, Forts, or Barracks, shall either themselves exact exorbitant Prices for Houses or Stalls let out to Suttlers, or shall connive at the like Exactions in others; nor by their own Authority, and for their private Advantage, shall they lay any Duty or Imposition upon, or be interested in the Sale of such Victuals, Liquors, or other Necessaries of Life, which are brought into the Garrison, Fort, or Barracks, for the use of the Soldiers, on the Penalty of being discharged from Our Service.

SECTION IX.—*Quarters.*

## ART. I.

No Officer shall demand Billets for Quartering more than his effective Men; nor shall he quarter any Wives, Children, Men or Maid Servants, in the Houses assigned for the Quartering of Officers or Soldiers, without the Consent of the Owners; nor shall he take Money for the freeing of Landlords from the Quartering of Officers or Soldiers: If a Commissioned Officer so offending, he shall be cashiered; if a Non-commissioned Officer, he shall be reduced to a private Centinel, and suffer such corporal Punishment as shall be inflicted upon him by the Sentence of a Court-martial.

## ART. II.

Every Officer commanding a Regiment, Troop, or Company, or Party, whether in settled Quarters, or upon a March, shall take Care that his own Quarters, as also the Quarters of every Officer and Soldier under his Command, be regularly cleared at the End of every Week, according to the Rules specified by the Act of Parliament now in Force; but



in case any such Regiment, Troop, or Company or Party be ordered to march before Money may be come to the Hands of the Commanding Officer aforesaid, he is hereby required to see that the Accounts with all Persons who shall have Money due to them for the Quartering of Officers and Soldiers, be exactly stated; specifying what Sum is then justly due to him, as likewise the Regiment, Troop, or Company to which the Officers and Soldiers so indebted to him belong, and is, by the first Opportunity, to remit Duplicates of the said Certificates to Our Paymaster General: Any Commanding Officer who shall refuse or neglect the making up such Accounts, and certifying the same as is above directed, shall be cashiered.

## ART. III.

The Commanding Officer of every Regiment, Troop, or Company, or Detachment, shall, upon their first coming to any City, Town, or Village, where they are to remain in Quarters, cause publick Proclamation to be made, signifying, That if the Landlords or other Inhabitants suffer the Non-commissioned Officers or Soldiers to contract Debts beyond what their daily Subsistence will answer, that such Debts will not be discharged; he the said Commanding Officer shall, for refusing or neglecting so to do, be suspended for Three Months; during which Time his whole Pay shall be applied to the discharging such Debts as shall have been contracted by the Non-commissioned Officers or Soldiers under his Command, beyond the Amount of their daily Subsistence: If there be any Overplus remaining, it may be returned to him.

## ART. IV.

If, after publick Proclamation to be made, the Inhabitants shall notwithstanding suffer the Non-commissioned Officers and Soldiers to contract Debts beyond what the Money issued out, or to be issued out for their daily Subsistence will answer, it will be at their own Peril, the Officers not being obliged to discharge the said Debts.

## ART. V.

Every Officer commanding in Quarters, Garrisons, or on a March, shall keep good Order, and to the utmost of his Power redress all such abuses or disorders which may be committed by any Officer or Soldier under his Command; if, upon Complaint made to him of Officers or Soldiers beating, or otherwise ill-treating of their Landlords, or of extorting more from them than they are obliged to furnish by Law; of disturbing Fairs or Markets, or of committing any Kind of Riots, to the disquieting of Our People; he the said Commander who shall refuse or omit to see Justice done on the Offender or Offenders, and Reparation made to the Party or Parties injured, as far as Part of the Offender's Pay shall enable him or them, shall, upon Proof thereof, be punished by a General Court-martial, as if he himself had committed the Crimes or Disorders complained of.

SECTION X.—*Carriages.*

The Commanding Officer of every Regiment, Troop, Company or Detachment, which shall be ordered to march, is to apply to the proper Magistrates for the necessary Carriages, and is to pay for them as is di-

rected by the Act of Parliament; taking Care not himself to abuse, nor to suffer any Persons under his Command to beat or abuse the Waggoners, or other Persons attending such Carriages; nor to suffer more than Thirty hundred Weight to be loaded on any Wain or Waggon so furnished, or in Proportion on Carts or Carrs; not to permit Soldiers (except such as are sick or lame) or Women to ride upon the said Carriages; Whatsoever Officer shall offend herein, or, in case of Failure of Money, shall refuse to grant Certificates, specifying the Sums due for the Use of such Carriages, and the Name of the Regiment, Troop, or Company in whose Service they were employed, shall be cashiered, or be otherwise punished according to the Degree of his Offence by a General Court-martial.

### SECTION XI.—*Of Crimes Punishable by Law.*

#### ART. I.

Whenever any Officer or Soldier shall be accused of a capital Crime, or of having used Violence, or committed any Offence against the Persons or Property of Our Subjects, such as is punishable by the known Laws of the Land, the Commanding Officer and Officers of every Regiment, Troop, or Party, to which the Person or Persons so accused shall belong, are hereby required, upon Application duly made by or in Behalf of the Party or Parties injured, to use his utmost Endeavours to deliver over such accused Person or Persons to the Civil Magistrate; and likewise to be aiding and assisting to the Officers of Justice, in apprehending and securing the Person or Persons so accused, in order to bring them to a Trial. If any Commanding Officer or Officers shall willfully neglect or shall refuse, upon the Application aforesaid, to deliver over such accused Person or Persons to the Civil Magistrates, or to be aiding and assisting to the Officers of Justice in apprehending such Person or Persons, the Officer or Officers so offending shall be cashiered.

#### ART. II.

No Officer shall protect any Person from his Creditors on the Pretence of his being a Soldier, nor any Non-commissioned Officer or Soldier who does not actually do all Duties us such, and no farther than is allowed by the present Act of Parliament, and according to the true Intent and Meaning of the said Act: Any Officer offending herein, being convicted thereof before a Court-martial, shall be cashiered.

### SECTION XII.—*Of Redressing Wrongs.*

#### ART. I.

If any Officer shall think himself to be wronged by his Colonel, or the Commanding Officer of the Regiment, and shall, upon due Application made to him, be refused to be redressed, he may complain to the General, commanding in Chief, of Our Forces, in order to obtain Justice; who is hereby required to examine into the said Complaint; and either by himself, or by Our Secretary at War, to make his Report to Us thereupon, in order to receive Our further Directions.

## ART. II.

If any inferior Officer or Soldier shall think himself wronged by his Captain, or other Officer commanding the Troop or Company to which he belongs, he is to complain thereof to the Commanding Officer of the Regiment, who is hereby required to summon a Regimental Court-martial, for the doing Justice to the Complainant; from which Regimental Court-martial either Party may, if he thinks himself still aggrieved, appeal to a General Court-martial: But if, upon a Second Hearing, the Appeal shall appear to be vexatious and groundless, the Person so appealing shall be punished at the Discretion of the said General Court-martial.

SECTION XIII.—*Of Stores, Ammunition, &c.*

## ART. I.

Whatsoever Commissioned Officer, Store-keeper, or Commissary shall be convicted at a General Court-martial of having sold (without a proper Order for that Purpose) embezzled, misapplied, or wilfully, or through neglect, suffered any of Our Provisions, Forage, Arms, Clothing, Ammunition, or other Military Stores, to be spoiled or damaged, the said Officer, Storekeeper, or Commissary so offending, shall, at his own Charge, make good the Loss or Damage, and be dismissed from Our service, and suffer such other Penalty as by the Act of Parliament is inflicted.

## ART. II.

Whatsoever Non-commissioned Officer or Soldier shall be convicted at a Regimental Court-martial of having sold, or designedly, or through Neglect, wasted the Ammunition delivered out to him to be employed in Our Service, shall, if a Non-commissioned Officer, be reduced to a private Centinel, and shall besides suffer corporal Punishment, in the same Manner as a private Centinel so offending, at the Discretion of a Regimental Court-martial.

## ART. III.

Every Non-commissioned Officer or Soldier who shall be convicted at a Court-martial of having sold, lost, or spoiled, through Neglect, his Horse, Arms, Clothes, or Accoutrements, shall undergo such Weekly Stoppages (not exceeding the Half of his Pay) as a Court-martial shall judge sufficient for repairing the Loss or Damage; and shall suffer Imprisonment, or such other corporal Punishment, as his crime shall deserve.

## ART. IV.

Every Non-commissioned Officer who shall be convicted at a General or Regimental Court-martial, of having embezzled or misapplied any Money, with which he may have been intrusted for the Payment of the Men under his Command, or for inlisting Men into Our Service, shall be reduced to serve in the Ranks as a private Soldier, be put under Stoppages until the Money be made good, and suffer such corporal Punishment (not extending to Life or Limb) as the Court-martial shall think fit.

## ART. V.

Every Captain of a Troop or Company, is charged with the Arms, Accoutrements, Ammunition, Clothing, or other warlike Stores belonging to the Troop or Company under his Command, which he is to be accountable for to his Colonel, in case of their being lost, spoiled, or damaged, not by unavoidable Accidents, or on actual Service.

SECTION XIV.—*Of Duties in Quarters, in Garrison, or in the Field.*

## ART. I.

All Non-commissioned Officers and Soldiers, who shall be found One Mile from the Camp, without Leave in Writing from their Commanding Officer, shall suffer such Punishment as shall be inflicted upon them by the Sentence of a Court-martial.

## ART. II.

No Officer or Soldier shall lie out of his Quarters, Garrison, or Camp without Leave from his superior Officer, upon Penalty of being punished according to the Nature of his Offence by the Sentence of a Court-Martial.

## ART. III.

Every Non-commissioned Officer and Soldier shall retire to his Quarters or Tent at the Beating of the Retreat; in Default of which, he shall be punished according to the Nature of his Offence, by the Commanding Officer.

## ART. IV.

No Officer, Non-commissioned Officer, or Soldier shall fail of repairing, at the time fixed, to the Place of Parade of Exercise, or other Rendezvous appointed by his Commanding Officer, if not prevented by Sickness, or some other evident Necessity; or shall go from the said Place of Rendezvous, or from his Guard, without Leave from his Commanding Officer, before he shall be regularly dismissed or relieved, on the Penalty of being punished according to the Nature of his Offence, by the Sentence of a Court-martial.

## ART. V.

Whatever Commissioned Officer shall be found drunk on his Guard, Party, or other Duty, under Arms, shall be cashiered for it; any Non-commissioned Officer or Soldier so offending, shall suffer such corporal Punishment as shall be inflicted by the Sentence of a Court-martial.

## ART. VI.

Whatever Centinel shall be found sleeping upon his Post, or shall leave it before he shall be regularly relieved, shall suffer Death, or such other Punishment as shall be inflicted by the Sentence of a Court-martial.

## ART. VII.

No Soldier belonging to any of Our Troops or Regiments of Horse or Foot Guards, or to any other Regiment of Horse, Foot, or Dra-

goons in Our Service, shall hire another to do his Duty for him, or be excused from Duty, but in case of Sickness, Disability, or Leave of Absence; and every such Soldier found guilty of hiring his Duty, as also the Party so hired to do another's Duty, shall be punished at the next Regimental Court-martial.

## ART. VIII.

And every Non-commissioned Officer conniving at such Hiring of Duty as aforesaid, shall be reduced for it; and every Commissioned Officer, knowing and allowing of such ill Practices in Our Service, shall be punished by the Judgment of a General Court-martial.

## ART. IX.

Any Person belonging to Our Forces employed in Foreign Parts who, by discharging of Fire Arms, drawing of Swords, beating of Drums, or by any other Means whatsoever, shall occasion false Alarms in Camp, Garrison, or Quarters, shall suffer Death, or such other Punishment as shall be ordered by the Sentence of a General Court-martial.

And whosoever shall be found guilty of the said Offence in *Great Britain or Ireland*, shall be punished at the Discretion of a General Court-martial.

## ART. X.

Any Officer or Soldier, who shall, without urgent Necessity, or without the Leave of his superior Officer, quit his Platoon or Division, shall be punished according to the Nature of his Offence by the Sentence of a Court-martial.

## ART. XI.

No Officer or Soldier shall do Violence to any Person who brings Provisions or other Necessaries to the Camp, Garrison, or Quarters of Our Forces employed in Foreign Parts, on Pain of Death.

## ART. XII.

Whatsoever Officer or Soldier shall misbehave himself before the Enemy, or shamefully abandon any Post committed to his Charge, or shall speak Words inducing others to do the like, shall suffer Death.

## ART. XIII.

Whatsoever Officer or Soldier shall misbehave himself before the Enemy, and run away, or shamefully abandon any Fort, Post, or Guard, which he or they shall be commanded to defend, or speak Words inducing others to do the like; or who, after Victory, shall quit his Commanding Officer, or Post, to plunder and pillage; every such Offender, being duly convicted thereof, shall be reputed a Disobeyer of Military Orders; and shall suffer Death, or such other Punishment as by a General Court-martial shall be inflicted on him.

## ART. XIV.

Any Person belonging to Our Forces employed in Foreign Parts, who shall cast away his Arms and Ammunition, shall suffer Death, or

such other Punishment as shall be ordered by the Sentence of a General Court-martial.

And whosoever shall be found guilty of the said Offence in *Great Britain* or *Ireland*, shall be punished at the discretion of a General Court-martial.

#### ART. XV.

Any Person belonging to Our Forces employed in Foreign Parts, who shall make known the Watch Word to any Person who is not entitled to receive it according to the Rules and Discipline of War, or shall presume to give a Parole or Watch Word different from what he received, shall suffer Death, or such other Punishment as shall be ordered by the Sentence of a General Court-martial.

And whosoever shall be found guilty of the said Offence in *Great Britain* or *Ireland*, shall be punished at the Discretion of a General Court-martial.

#### ART. XVI.

All Officers and Soldiers are to behave themselves orderly in Quarters, and on their March; and whosoever shall commit any Waste or Spoil, either in Walks of Trees, Parks, Warrens, Fish-ponds, Houses, or Gardens, Cornfields, Enclosures, or Meadows, or shall maliciously destroy any Property whatsoever belonging to any of our subjects, unless by Order of the then Commander in Chief of Our Forces to annoy Rebels, or other Enemies in Arms against Us, he or they that shall be found guilty of offending herein, shall (besides such Penalties as they are liable to by Law) be punished according to the Nature and Degree of the Offence, by the Judgment of a Regimental or General Court-martial.

#### ART. XVII.

Whosoever of Our Forces employed in Foreign Parts shall force a Safeguard, shall suffer Death.

#### ART. XVIII.

Whosoever shall relieve the Enemy with Money, Victuals, or Ammunition, or shall knowingly harbour or protect an Enemy, shall suffer Death, or such other Punishment as by a Court-martial shall be inflicted.

#### ART. XIX.

Whosoever shall be convicted of holding Correspondence with, or giving Intelligence to, the Enemy, either directly or indirectly, shall suffer Death, or such other Punishment as by a Court-martial shall be inflicted.

#### ART. XX.

All Public Stores taken in the Enemies Camp, Towns, Forts or Magazines, whether of Artillery, Ammunition, Clothing, Forage, or Provisions, shall be secured for Our Service; for the Neglect of which Our Commanders in Chief are to be answerable.

#### ART. XXI.

If any Officer or Soldier shall leave his Post or Colours to go in Search of Plunder, he shall, upon being convicted thereof before a General Court-

martial suffer Death, or such other Punishment as by a Court-martial shall be inflicted.

## ART. XXII.

If any Governor or Commandant of any Garrison, Fortress, or Post, shall be compelled by the Officers or Soldiers under his Command to give up to the Enemy, or to abandon it, the Commissioned Officers, Non-commissioned Officers, or Soldiers, who shall be convicted of having so offended, shall suffer Death, or such other punishment as may be inflicted upon them by the Sentence of a Court-martial.

## ART. XXIII.

All Suttlers and Retainers to a Camp, and all persons whatsoever serving with Our Armies in the Field, though no inlisted Soldiers, are to be subject to orders, according to the Rules and Discipline of War.

## ART. XXIV.

Officers having Brevetts, or Commissions of a prior Date to those of the Regiment in which they now serve, may take Place in Courts-martial and on Detachments, when composed of different Corps, according to the Ranks given them in their Brevetts, or dates of their former Commissions; But in the Regiment, Troop, or Company, to which such Brevett Officers, and those who have Commissions of a prior Date, do belong, they shall do Duty, and take Rank both on Courts-martial and on Detachments, which shall be composed only of their own Corps, according to the Commissions by which they are mustered in the said Corps.

## ART. XXV.

If upon Marches, Guards, or in Quarters, any of Our Troops of Horse Guards, Grenadier Guards, or Regiment of Horse Guards, shall happen to join or do Duty together, the eldest Officer by Commission there, on Duty or in Quarters, shall command the Whole, and give out Orders for what is needful to Our Service; Regard being always had to the several Ranks of those Corps, and the Posts they usually occupy.

## ART. XXVI.

And in like Manner also, if any Regiments, Troops, or Detachments of Our Horse or Foot Guards shall happen to march with, or be encamped or quartered with any Bodies or Detachments of Our other Troops, the eldest Officer, without Respect to Corps, shall take upon him the Command of the Whole, and give the necessary Orders to Our Service.

## ART. XXVII.

When Our Regiments of Foot Guards, or Detachments from Our said Regiments, shall do Duty together, unmixed with other Corps, they shall be considered as One Corps; and the Officers shall take Rank and do Duty according to the Commissions by which they are mustered.

SECTION XV.—*Administration of Justice.*

## ART. I.

A General Court-martial in Our Kingdoms of *Great Britain* or *Ire-*

*land*, shall not consist of less than Thirteen Commissioned Officers, and the President of such Court-martial shall not be the Commander in Chief, or Governor of the Garrison, where the Offender shall be tried, nor be under the Degree of a Field Officer.

## ART. II.

A General Court-martial, held in Our Garrison of *Gibraltar*, Island of *Minorca*, or in any other Place beyond the Seas, shall not consist of less than Thirteen Commissioned Officers; nor shall the President of such General Court-martial be the Commander in Chief, or Governor of the Garrison, where the Offender shall be tried, nor under the Degree of a Field Officer, unless where a Field Officer cannot be had, in which Case the Officer next in Seniority to the Commander, not being under the Degree of a Captain, shall preside at such Court-martial.

## ART. III.

Whereas these Our Rules and Articles are to be observed by, and do in all Respects regard Our Troops and Regiments of Horse and Foot Guards, as well as Our other Forces; and that several Disputes have arisen, and may arise, between the Officers of Our Horse and Foot Guards, in relation to their holding of Courts-martial, and also among the Officers of Our Troops of Horse Guards, Grenadier Guards, and Regiment of Horse Guards, on that and other Points of Duty; we do therefore herein declare it to be Our Will and Pleasure, That when any Officer or Soldier belonging to Our said Troops of Horse Guards, Grenadier Guards, or Regiment of Horse Guards, shall happen to be brought before a General Court-martial, for Differences arising purely among themselves, or for Crimes relating to Discipline, or Breach of Orders, such Courts-martial shall be composed of Officers serving in any or all of those Corps of Horse Guards (as they may then happen to lie for their being most conveniently assembled) where the Officers are to take Post according to the Dates and Degrees of Rank granted them in their respective Commissions, without Regard to the Seniority of Corps, or other formerly pretended Privileges.

## ART. IV.

In like Manner also, the Officers of Our Three Regiments of Foot Guards, when appointed to hold Courts-martial for Differences or Crimes as aforesaid, shall of themselves compose Courts-martial, and take Rank according to their Commissions; but for all Disputes or Differences which may happen between Officers or Soldiers belonging to Our said Corps of Horse Guards, and other Officers and Soldiers belonging to Our Regiments of Foot Guards, or between any Officers or Soldiers belonging to either of those Corps of Horse or Foot Guards, and Officers and Soldiers of Our other Troops, the Courts-martial to be appointed in such Cases shall be equally composed of Officers belonging to the Corps in which the Parties complaining and complained of do then serve; and the President to be ordered by Turns, beginning first by an Officer of One of Our Troops of Horse Guards; and so on in Course out of the other Corps.



## ART. V.

The Members both of General and Regimental Courts-martial shall, when belonging to different Corps, take the same Rank which they hold in the Army; but when Courts-martial shall be composed of Officers of One Corps, they shall take their Ranks according to the Dates of the Commissions by which they are mustered in the said Corps.

## ART. VI.

The Judge Advocate General, or some Person deputed by him, shall prosecute in His Majesty's Name; and in all Trials of Offenders by General Courts-martial, administer to each Member the following oaths:

*You shall well and truly try and determine, according to your Evidence, the Matter now before you, between our Sovereign Lord the King's Majesty, and the Prisoner to be tried.*

*I A. B. do swear, That I will duly administer Justice according to the Rules and Articles for the better Government of His Majesty's Forces, and according to an Act of Parliament now in Force for the Punishment of Mutiny and Desertion, and other Crimes therein mentioned, without Partiality, Favour, or Affection; and if any doubt shall arise, which is not explained by the said Articles or Act of Parliament, according to my Conscience, the best of my Understanding, and the Custom of War in the like Cases. And I do further swear, That I will not divulge the Sentence of the Court, until it shall be approved by His Majesty, the General, or Commander in Chief; neither will I, upon any account, at any Time whatsoever, disclose or discover the Vote or Opinion of any particular Member of the Court-martial, unless required to give Evidence thereof, as a Witness, by a Court of Justice, in a due Course of Law.*

And as soon as the said Oath shall have been administered to the respective Members, the President of the Court shall administer to the Judge Advocate, or Person officiating as such, an Oath in the following words:

*I A. B. do swear, That I will not, upon any account, at any Time whatsoever, disclose or discover the Vote or Opinion of any particular Member of the Court-martial, unless required to give Evidence thereof, as a Witness, by a Court of Justice, in a due Course of Law.*

## ART. VII.

All the Members of a Court-martial are to behave with Decency; and in the giving of their Votes are to begin with the youngest.

## ART. VIII.

All Persons who give Evidence before a General Court-martial, are to be examined upon Oath; nor shall any Sentence of Death be given against any offender by any General Court-martial, unless Nine Officers present shall concur therein: And if there be more than Thirteen, then the Judgment shall pass by the Concurrence of Two-Thirds of the Officers present.

## ART. IX.

No Field Officer shall be tried by any Person under the Degree of a Captain ; nor shall any Proceedings or Trials be carried on excepting between the Hours of Eight in the Morning, and of Three in the Afternoon, except in Cases which require an immediate Example.

## ART. X.

No Sentence of a General Court-martial shall be put in Execution, till after a Report shall be made of the whole Proceedings to Us, or to Our General or Commander in Chief, and Our or his Directions shall be signified thereupon; excepting in *Ireland*, where the Report is to be made to the Lord Lieutenant, and to Our Chief Governor or Governors of that Kingdom, and his or their Directions be received thereupon.

## ART. XI.

For the more equitable Decision of Disputes which may arise between Officers and Soldiers belonging to different Corps, whether they be of Our Troops, or Regiment of Horse Guards, Our Three Regiments of Foot Guards, or Our other Regiments of Horse or Foot, We direct, That the Courts-martial shall be equally composed of Officers belonging to the Corps in which the parties in Question do then serve; and that the Presidents shall be taken by Turns, beginning with that Corps which shall be eldest in Rank.

## ART. XII.

The Commissioned Officers of every Regiment may, by the Appointment of their Colonel or Commanding Officer, hold Regimental Courts-martial for the enquiring into such Disputes, or Criminal Matters, as may come before them, and for the inflicting corporal Punishments for small Offences, and shall give Judgment by the Majority of Voices; but no Sentence shall be executed till the Commanding Officer (not being a Member of the Court-martial) or the Governor of the Garrison shall have confirmed the same.

## ART. XIII.

No Regimental Court-martial shall consist of less than Five Officers, excepting in Cases where that Number cannot be conveniently assembled, when Three may be sufficient; who are likewise to determine upon the Sentence by the Majority of Voices; which Sentence is to be confirmed by the Commanding Officer, not being a Member of the Court-martial.

## ART. XIV.

Every Officer commanding in any of Our Forts, Castles, or Barracks, or elsewhere, where the Corps under his Command consists of Detachments from different Regiments, or of Independent Companies, may assemble Courts-martial for the Trial of Offenders in the same manner as if they were Regimental, whose Sentence is not to be executed till it shall be confirmed by the said Commanding Officer.

## ART. XV.

No Commissioned Officer shall be cashiered or dismissed from Our

Service, excepting by an Order from Us, or by the Sentence of a General Court-martial, approved by Us, or by such General or Commander in Chief, who shall by Our Authority appoint the same to be held; but Non-commissioned Officers may be discharged as private Soldiers, and, by the Order of the Colonel of the Regiment, or by the Sentence of a Regimental Court-martial, be reduced to private Centinels.

## ART. XVI.

No Person whatever shall use menancing Words, Signs, or Gestures, in the Presence of a Court-martial then sitting, or shall cause any Disorder or Riot, so as to disturb their Proceedings, on the Penalty of being punished at the Discretion of the said Court-martial.

## ART. XVII.

To the end that Offenders may be brought to Justice, We hereby direct, That whenever any Officer or Soldier shall commit a Crime deserving Punishment, he shall, by his commanding Officer, if an Officer, be put in Arrest; if a Non-commissioned Officer or Soldier, be imprisoned till he shall be either tried by a Court-martial, or shall be lawfully discharged by a proper Authority.

## ART. XVIII.

No Officer or Soldier who shall be put in Arrest or Imprisonment shall continue in his Confinement more than Eight Days, or till such time as a Court-martial can be conveniently assembled.

## ART. XIX.

No Officer commanding a Guard, or Provost-martial, shall refuse to receive, or keep any Prisoner committed to his Charge, by any Officer belonging to Our Forces; which Officer shall, at the same Time, deliver an Account in Writing, signed by himself, of the Crime with which the said Prisoner is charged.

## ART. XX.

No Officer commanding a Guard, or Provost-martial, shall presume to release any Prisoner committed to his Charge, without proper Authority for so doing; nor shall he suffer any Prisoner to escape, on the Penalty of being punished for it by the Sentence of a Court-martial.

## ART. XXI.

Every Officer or Provost-martial to whose charge Prisoners shall be committed, is hereby required, within Twenty four Hours after such Commitment, or as soon as he shall be relieved from his Guard, to give in Writing to the Colonel of the Regiment to whom the Prisoner belongs (where the Prisoner is confined upon the Guard belonging to the said Regiment, and that his Offence only relates to the Neglect of Duty in his own Corps) or to the Commander in Chief, their Names, their Crimes, and the Names of the Officers who committed them, on the Penalty of his being punished for his Disobedience or Neglect, at the Discretion of a Court-martial.

## ART. XXII.

And if any Officer under Arrest shall leave his Confinement, before he is set at Liberty by the Officer who confined him, or by a superior Power, he shall be cashiered for it.

## ART. XXIII.

Whatsoever Commissioned Officer shall be convicted before a General Court-martial, of behaving in a scandalous infamous Manner, such as is unbecoming the Character of an Officer and a Gentleman, shall be discharged from Our Service.

SECTION XVI.—*Entry of Commissions.*

All Commissions granted by Us, or by any of Our Generals having Authority from Us, shall be entered in the Books of Our Secretary at War, and Commissary General, otherwise they will not be allowed of at the Musters.

SECTION XVII.—*Concerning the Effects of Deceased Officers and Soldiers.*

## ART. I.

When any Commissioned Officer shall happen to die, or be killed in Our Service, the Major of the Regiment, or the Officer doing the Major's Duty in his Absence, shall immediately secure all his Effects or Equipage then in Camp or Quarters; and shall before the next Regimental Court-martial make an Inventory thereof, and forthwith transmit the same to the Office of Our Secretary at War, to the end that his Executors may, after Payment of his Debts in Quarters, and Interment, receive the Overplus, if any be, to his or their Use.

## ART. II.

When any Non-commissioned Officer or Private Soldier shall happen to die, or to be killed in Our Service, the then Commanding Officer of the Troop or Company shall, in the Presence of two other Commissioned Officers, take an Account of whatever Effects he dies possessed of, above his Regimental Clothing, Arms, and Accoutrements, and transmit the same to the Office of Our Secretary at War; which said Effects are to be accounted for, and paid to the Representative of such deceased Non-commissioned Officer or Soldier. And in case any of the Officers, so authorized to take care of the Effects of dead Officers and Soldiers, should, before they shall have accounted to their Representatives for the same, have Occasion to leave the Regiment, by Preferment or otherwise, they shall, before they be permitted to quit the same, deposit in the Hands of the Commanding Officer, or of the Agent of the Regiment, all the Effects of such deceased Non-commissioned Officers and Soldiers, in order that the same may be secured for, and paid to, their respective Representatives.

SECTION XVIII.—*Artillery.*

## ART. I.

All Officers, Conductors, Gunners, Matrosses, Drivers, or any other Persons whatsoever receiving Pay or Hire in the Service of Our Artillery, shall be governed by the aforesaid Rules and Articles, and shall be subject to be tried by Courts-martial, in like Manner with the Officers and Soldiers of Our other Troops.

## ART. II.

For Differences arising amongst themselves, or in Matters relating solely to their own Corps, the Courts-martial may be composed of their own Officers; but where a Number sufficient of such Officers cannot be assembled, or in Matters wherein other Corps are interested, the Officers of Artillery shall sit in Courts-martial with the Officers of Our other Corps, taking their Rank according to the Dates of their respective Commissions, and no otherwise.

SECTION XIX.—*American Troops.*

## ART. I.

The Officers and Soldiers of any Troops which are or shall be raised in *America*, being mustered and in Pay, shall, at all Times, and in all Places, when joined, or acting in Conjunction with Our *British* Forces, be governed by these Rules or Articles of War, and shall be subject to be tried by Courts-martial in like Manner with the Officers and Soldiers of Our *British* Troops.

## ART. II.

Whereas, notwithstanding the Regulations which We were pleased to make for settling the Rank of Provincial General and Field Officers in *North America*, Difficulties have arisen with regard to the Rank of the said Officers when acting in Conjunction with Our Regular Forces; and We being willing to give due Encouragement to Officers serving in Our Provincial Troops, it is Our Will and Pleasure, That, for the future, all General Officers and Colonels serving by Commission from any of the Governors, Lieutenant or Deputy Governors, or Presidents of the Council for the time being of Our Provinces and Colonies in *North America*, shall, on all Detachments, Courts-martial, or other Duty, wherein they may be employed in Conjunction with Our Regular Forces, take Rank next after all Colonels serving by Commissions signed by Us, though the Commissions of such Provincial Generals and Colonels should be of elder Date: And, in like Manner, that Lieutenant Colonels, Majors, Captains, and other inferior Officers serving by Commission from the Governors, Lieutenant or Deputy Governors, or Presidents of the Council for the time being of Our said Provinces and Colonies in *North America*, shall, on all Detachments, Courts-martial, or other Duty, wherein they may be employed in Conjunction with Our Regular Forces, have Rank next after all Officers of the like Rank serving by Commissions signed by Us, or by Our General Commanding in Chief in *North America*, though the

Commissions of such Lieutenant Colonels, Majors, Captains, and other inferior Officers, should be of elder Date to those of the like Rank signed by Us, or by Our said General.

SECTION XX.—*Relating to the foregoing Articles.*

ART. I.

The foregoing Articles are to be read and published Once in every Two Months at the Head of every Regiment, Troop, or Company, mustered or to be mustered in Our Service; and are to be duly observed and exactly obeyed by all Officers and Soldiers who are or shall be in Our Service, excepting in what relates to the Payment of Soldiers Quarters, and to Carriages, which is, in Our Kingdom of *Ireland*, to be regulated by the Lord Lieutenant or Chief Governor or Governors thereof, and in Our Islands, Provinces, and Garrisons beyond the Seas, by the respective Governors of the same, according as the different Circumstances of the said Islands, Provinces, or Garrisons may require.

ART. II.

Notwithstanding its being directed in the Eleventh Section of these Our Rules and Articles, that every Commanding Officer is required to deliver up to the Civil Magistrate all such Persons under his Command who shall be accused of any Crimes which are punishable by the known Laws of the Land; yet in Our Garrison of *Gibraltar*, Island of *Minorca*, Forts of *Placentia* and *Annapolis Royal*, where Our Forces now are, or in any other Place beyond the Seas, to which any of Our Troops are or may be hereafter commanded, and where there is no Form of Our Civil Judicature in Force, the Generals or Governors, or Commanders respectively, are to appoint General Courts-martial to be held, who are to try all Persons guilty of Wilful Murder, Theft, Robbery, Rapes, Coining, or Clipping the Coin of *Great Britain*, or of any Foreign Coin current in the Country or Garrison, and all other Capital Crimes, or other Offences, and punish Offenders with Death, or otherwise, as the Nature of their Crimes shall deserve.

ART. III.

All Crimes not Capital, and all Disorders, or Neglects, which Officers and Soldiers may be guilty of, to the Prejudice of good Order and Military Discipline, though not mentioned in the above Articles of War, are to be taken Cognizance of by a Court-martial, and be punished at their Discretion.

G. R.

## VIII.

## THE MASSACHUSETTS ARTICLES OF WAR.

ADOPTED BY THE PROVISIONAL CONGRESS OF MASSACHUSETTS BAY, APRIL 5, 1775.

Whereas the lust of power which of old oppressed, persecuted and exiled our pious and virtuous ancestors from their fair possessions in Britain, now pursues with ten-fold severity us, their guileless children, who are unjustly and wickedly charged with licentiousness, sedition, treason and rebellion; and being deeply impressed with a sense of the almost incredible fatigues and hardships our venerable progenitors encountered, who fled from oppression for the sake of civil and religious liberty for themselves and their offspring, and began a settlement here on bare creation at their own expense; and having seriously considered the duty we owe to God, to the memory of such invincible worthies, to the King, to Great Britain, our country, ourselves, and posterity, do think it our indispensable duty, by all lawful ways and means in our power, to recover, maintain, defend, and preserve the free exercise of all those civil and religious rights and liberties, for which many of our forefathers fought bled and died, and to hand them down entire for the free enjoyment of the latest posterity. And whereas the keeping of a Standing Army in any of these Colonies in times of peace, without the consent of the Legislature of that Colony in which such Army is kept, is against law. And whereas such an Army, with a large Naval force, is now placed in the Town and Harbour of Boston, for the purpose of subjecting us to the power of the British Parliament. And whereas we are frequently told by the tools of the Administration, dupes to Ministerial usurpation, that Great Britain will not in any degree relax in her measures until we acknowledge her "right of making laws binding upon us in all cases whatever," and that if we persist in our denial of her claim, the dispute must be decided by Arms, in which it is said by our enemies "we shall have no chance, being undisciplined, cowards, disobedient, impatient of command, and possessed of that spirit of revelling which admits of no order, subordination, rule, or government."

And whereas the Ministerial Army and Fleet now at Boston, the large reinforcement of Troops expected, the late Circular Letter to the Governours upon the Continent, the general tenour of intelligence from Great Britain and the hostile preparations making here, as also from the threats and repeated insults of our enemies in the Capital Town, we have reason to apprehend that the sudden destruction of this Province is in contemplation if not determined upon.

And whereas the great law of self-preservation may suddenly require our raising and keeping an Army of observation and defence, in order to prevent or repel any further attempt to force the late cruel and oppressive Acts of the British Parliament, which are evidently designed to

subject us and the whole Continent to the most ignominious slavery. And whereas, in case of raising and keeping such an Army, it will be necessary that the Officers and Soldiers in the same be fully acquainted with their duty, and that the Articles, Rules and Regulations thereof be made as plain as possible; and having great confidence in the honour and public virtue of the inhabitants of this Colony that they will readily obey the Officers chosen by themselves, and will cheerfully do their duty when known, without any such severe Articles and Rules, (except in capital cases,) and cruel punishments as are usually practised in Standing Armies, and will submit to all such Rules and Regulations as are found in reason, honour and virtue. It is, therefore,

*Resolved*, That the following Articles, Rules and Regulations for the Army, that may be raised for the defence and security of our lives, liberties, and estates, be, and are hereby earnestly recommended to be, strictly adhered to, by all Officers, Soldiers, and others concerned, as they regard their own honour and the publick good.

*Article 1st.* All Officers and Soldiers, not having just impediment, shall diligently frequent Divine Service and Sermon in the places appointed for the Assembling of the Regiment, Troop or Company to which they belong; and such as wilfully absent themselves, or being present behave indecently or irreverently, shall, if Commissioned Officers, be brought before a Regimental Court Martial, there to be publicly and severely reprimanded by the President; if Non-Commissioned Officers or Soldiers, every person so offending shall, for his first offence, forfeit one Shilling to be deducted out of his wages; for the second offence he shall not only forfeit one shilling, but be confined twenty four hours; and for every like offence shall suffer and pay in like manner: which money so forfeited shall be applied to the use of the sick Soldiers of the Troop or Company to which the Offender belongs.

*Article 2d.* Whatsoever Non-Commissioned Officer or Soldier shall use any unlawful oath or execration, shall incur the penalties expressed in the preceding Article; and if a Commissioned Officer be thus guilty of profane cursing and swearing, he shall forfeit and pay for each and every such offence four Shillings, lawful money.

*Article 3d.* Any Officer or Soldier who shall begin, excite, or cause any mutiny or sedition, or join in such mutiny, in the Regiment, Troop, or Company to which he belongs, or in any other regiment, Troop, or Company of the Massachusetts forces, either by Land or Sea, or in any Party, Post, Detachment, or Guard, on any pretence whatever, shall suffer such punishment as by a General Court Martial shall be ordered.

*Article 4th.* Any Officer or Soldier who shall behave himself with contempt or disrespect towards the General or Generals, or Commanders-in-Chief of the Massachusetts Forces, or shall speak words tending to his or their hurt or dishonor, shall be punished according to the nature of his offence, by the judgment of a General Court Martial.

*Article 5th.* Any Officer, Non-Commissioned Officer, or Soldier, who, being present at any mutiny or sedition, does not use his utmost endeavors to suppress the same, or coming to the knowledge of any mutiny does not, without delay, give information thereof to his Commanding Officer, shall be punished by order of a General Court Martial, according to the nature of his offence.

*Article 6th.* Any Officer or Soldier who shall strike his Superiour Offi-



cer, or draw, or offer to draw, or shall lift up any weapon, or offer any violence against him, being in the execution of his office, on any pretence whatever, or shall disobey any lawful commands of his Superiour Officer, shall suffer such punishment as shall be, according to the nature of his offence, ordered by the sentence of a General Court Martial.

*Article 7th.* Any Non-Commissioned Officer or Soldier who shall desert, or, without leave from his Commanding Officer, absent himself from the Troop or Company to which he belongs, or from any detachment of the same, shall, upon being convicted thereof, be punished according to the nature of his offence, at the direction of a General Court Martial.

*Article 8th.* Whatever Officer or Soldier shall be convicted of having advised or persuaded any other Officer or Soldier to desert, shall suffer such punishment as shall be ordered by a sentence of a General Court Martial.

*Article 9th.* All Officers of what condition soever shall have power to part and quell all quarrels, frays and disorders, though the persons concerned should belong to another Regiment, Troop, or Company, and order Officers to be arrested, or Non-Commissioned Officers or Soldiers to be confined and imprisoned till their proper Superiour Officer shall be made acquainted therewith; and whoever shall refuse to obey such Officer, (though of an inferiour rank,) or shall draw his sword upon him, shall be punished at the discretion of a General Court Martial.

*Article 10th.* No Officer or Soldier shall use any reproachful or provoking speeches or gestures, nor shall presume to send a challenge to any person to fight a duel, nor shall second, promote, or carry any challenge; and whoever shall knowingly and wilfully suffer any person whatsoever to go forth to fight a duel, or shall second any such conduct, shall be deemed as a principal; and whatsoever Officer or Soldier shall upbraid another for refusing a challenge, shall be considered as a challenger; and all such offenders, in any of these or the like cases, shall be punished at the discretion of a General Court Martial.

*Article 11th.* Every Officer commanding in quarters, or on a march, shall keep good order, and to the utmost of his power, redress all such abuses or disorders which may be committed by any Officer or Soldier under his command; if upon complaint made to him of Officers or Soldiers beating or otherwise ill-treating any person, or committing any kind of riots to the disquieting of the inhabitants of this Continent, he the said Commander, who shall refuse or omit to see Justice done to the offender or offenders, and reparation made to the party or parties injured, as soon as the offender's wages shall enable him or them, shall, upon due proof thereof, be punished, as ordered by a General Court Martial, in such manner as if he himself had committed the crimes or disorders complained of.

*Article 12th.* If any Officer should think himself to be wronged by his Colonel, or the Commanding Officer of the Regiment, and shall, upon due application made to him, be refused to be redressed, he may complain to the General or Commander-in-Chief of the Massachusetts Forces, in order to obtain justice, who is hereby required to examine into the complaint and see that justice be done.

*Article 13th.* If any inferiour Officer or Soldier shall think himself wronged by his Captain, or other Officer commanding the Troop or Company to which he belongs, he is to complain thereof to the Commanding Officer of the Regiment, who is hereby required to summon

a Regimental Court Martial for the doing justice to the complaint, from which Regimental Court Martial either party may, if he thinks himself still aggrieved, appeal to a General Court Martial; but if upon a second hearing the appeal shall appear to be vexatious and groundless, the person so appealing shall be punished at the discretion of a General Court Martial.

*Article 14th.* Whatsoever Non-Commissioned Officer or Soldier shall be convicted at a Regimental Court Martial of having sold, or designedly or through neglect wasted the Ammunition, Arms, or Provisions, or other Military Stores delivered out to him to be employed in the service of this Colony, shall, if an Officer, be reduced to a Private Soldier; and, if a Private Soldier, shall suffer such punishment as shall be ordered by a Regimental Court Martial.

*Article 15th.* All Non-Commissioned Officers or Soldiers, who shall be found one mile from the camp, without leave in writing from their Commanding Officer, shall suffer such punishment as shall be inflicted by the sentence of a Regimental Court Martial.

*Article 16th.* No Officer or Soldier shall be out of his quarters or camp, without leave from the Commanding Officer of his Regiment, upon penalty of being punished according to the nature of his offence, by order of a Regimental Court Martial.

*Article 17th.* Every Non-Commissioned Officer and Soldier shall retire to his quarters or tent at the beating the retreat; in default of which he shall be punished according to the nature of his offence, by order of the Commanding Officer.

*Article 18th.* No Officer, Non-Commissioned Officer, or Soldier, shall fail of repairing at the time fixed to the place of parade, of exercise, or other rendezvous, appointed by the Commanding Officer, if not prevented by sickness, or some other evident necessity, or shall go from the said place of rendezvous, or from his guard, without leave from his Commanding Officer, before he shall be regularly dismissed, or relieved, on penalty of being punished, according to the nature of his offence, by the sentence of a Regimental Court Martial.

*Article 19th.* Whatsoever Commissioned Officer shall be found drunk upon his guard, party, or other duty under Arms, shall be cashiered for it; any Non-Commissioned Officer or Soldier so offending shall suffer such punishment as shall be ordered by the sentence of a Regimental Court Martial.

*Article 20th.* Whatever Centinel shall be found sleeping upon his post, or shall leave it before he shall be regularly relieved, shall suffer such punishment as shall be ordered by the sentence of a General Court Martial.

*Article 21st.* Any person belonging to the Massachusetts Army, who, by discharging of Fire-Arms, beating of Drums, or by any other means whatever, shall occasion false alarms in camp or in quarters, shall suffer such punishment as shall be ordered by the sentence of a General Court Martial.

*Article 22d.* Any Officer or Soldier, who shall, without urgent necessity, or without leave of his Superiour Officer, quit his platoon or division, shall be punished according to the nature of his offence, by the sentence of a Regimental Court Martial.

*Article 23d.* No Officer or Soldier shall do violence, or suffer any insult or abuse, to any person who shall bring Provisions or other neces-

saries to the camp or quarters of the Massachusetts Army; any Officer or Soldier so offending shall, upon complaint being made to the Commanding Officer, suffer such punishment as shall be ordered by a Regimental Court Martial.

*Article 24th.* Whatever Officer or Soldier shall shamefully abandon any post committed to his charge, or shall speak words inducing others to do the like in time of an engagement, shall suffer death immediately.

*Article 25th.* Any person belonging to the Massachusetts Army who shall make known the watchword to any person who is not entitled to receive it, according to the rules and discipline of war, or shall presume to give a parole or watchword different from what he received, shall suffer death, or such other punishment as shall be ordered by a General Court Martial.

*Article 26th.* Whosoever belonging to the Massachusetts Army shall relieve the enemy with Money, Victuals, or Ammunition, or shall knowingly harbour and protect an enemy, shall suffer such punishment as by a General Court Martial shall be ordered.

*Article 27th.* Whosoever belonging to the Massachusetts Army shall be convicted of holding correspondence with, or giving intelligence to the enemy, either directly or indirectly, shall suffer such punishment as by a General Court Martial shall be ordered.

*Article 28th.* All Publick Stores taken in an enemy's camp, whether of Artillery, Ammunition, Clothing, or Provisions, shall be secured for the use of the Massachusetts Colony.

*Article 29th.* If any Officer or Soldier shall leave his post or colors in time of an engagement, to go in search of plunder, he shall, upon being convicted thereof before a General Court Martial, suffer such punishment as by said Court Martial shall be ordered.

*Article 30th.* If any Commander of any Post, Intrenchment, or Fortress, shall be compelled by the Officers or Soldiers under his command, to give it up to the enemy or to abandon it, the Commissioned Officers or Soldiers who shall be convicted of having so offended shall suffer death or such other punishment as may be inflicted on them by the sentence of a General Court Martial.

*Article 31st.* All sellers and retailers to a camp, and all persons whatsoever serving with the Massachusetts Army in the field, though not entitled Soldiers, are to be subject to the Articles, Rules and Regulations of the Massachusetts Army.

*Article 32d.* No General Court Martial shall consist of a less number than thirteen, none of which shall be under the degree of a Field Officer; and the President of each and every Court Martial, whether General or Regimental, shall have power to administer an oath to every witness, in order to the trial of offenders; and the Members of all Courts Martial shall be duly sworn by the President, and the next in rank on the Court Martial shall administer the oath to the President.

*Article 33d.* The Members both of General and Regimental Courts Martial shall, when belonging to different Corps, take the same rank which they hold in the Army; but when Courts Martial shall be composed of Officers of one Corps, they shall take rank according to their commissions, by which they are mustered in the said Corps.

*Article 34th.* All the Members of a Court Martial are to behave with calmness, decency, and impartiality, and in the giving of their votes are to begin with the youngest or lowest in commission.

*Article 35th.* No Field Officers shall be tried by any person under the degree of a Captain; nor shall any proceeding or trial be carried on excepting between the hours of eight in the morning and three in the afternoon, except in cases which require an immediate example.

*Article 36th.* The Commissioned Officers of every Regiment may, by the appointment of their Colonel or Commanding Officer, hold Regimental Courts Martial for the inquiring into such disputes or criminal matters as may come before them, and for the inflicting corporal punishments for small offences, and shall give judgment by the majority of voices; but no sentence shall be executed until the Commanding Officer, (not being a Member of the Court Martial,) shall have confirmed the same.

*Article 37th.* No Regimental Court Martial shall consist of less than five Officers, excepting in case when that number cannot be conveniently assembled, when three may be sufficient, who are likewise to determine upon the sentence by the majority of voices, which sentence is to be confirmed by the Commanding Officer, not being a member of the Court Martial.

*Article 38th.* Any Officer commanding in Forts, Castles, or Barracks, or elsewhere, where the Corps under his command consists of detachments from different Regiments, or of independent Companies, may assemble Courts Martial for the trial of offenders in the same manner as if they were Regimental, whose sentence is not to be executed till it shall be confirmed by the said Commanding Officer.

*Article 39th.* No person whatsoever shall use menacing words, signs, or gestures, in the presence of a Court Martial then sitting, or shall cause any disorder or riot, so as to disturb their proceedings, on penalty of being punished at the discretion of said Court Martial.

*Article 40th.* To the end that offenders may be brought to justice, whenever any Officer or Soldier shall commit a crime deserving punishment, he shall, by his Commanding Officer, if an Officer, be put in arrest; if a Non-Commissioned Officer or Soldier, be imprisoned till he shall be either tried by a Court Martial, or shall be lawfully discharged by proper authority.

*Article 41st.* No Officer or Soldier who shall be put in arrest or imprisonment, shall continue in his confinement more than eight days, or till such time as a Court Martial can be conveniently assembled.

*Article 42d.* No Officer commanding a Guard, or a Provost Martial, shall refuse to receive or keep any prisoner committed to his charge by any Officer belonging to the Massachusetts Forces; which Officer shall, at the same time, deliver an account in writing, signed by himself, of the crimes with which the said prisoner is charged.

*Article 43d.* No Officer commanding a Guard, or Provost Martial, shall presume to release any prisoner committed to his charge, without proper authority for so doing; nor shall he suffer any prisoner to escape on the penalty of being punished for it by the sentence of a General Court Martial.

*Article 44th.* Every Officer, or Provost Martial, to whose charge prisoners shall be committed, is hereby required, within twenty-four hours of such confinement, or as soon as he shall be released from his guard, to give in writing to the Colonel of the Regiment, to whom the prisoner belongs, (when the prisoner is confined upon the guard belonging to the said Regiment, and that his offence only relates to the neglect of duty

in his own Corps,) or to the Commander-in-Chief, their names, their crimes, and the names of the Officers who committed them, on the penalty of his being punished for his disobedience or neglect, at the discretion of a General Court Martial.

*Article 45th.* And if any Officer under arrest shall leave his confinement before he is set at liberty by the Officer who confined him, or by a superior power, he shall be cashiered for it.

*Article 46th.* Whatsoever Commissioned Officer shall be convicted before a General Court Martial of behaving in a scandalous, infamous manner, such as is unbecoming an Officer and a Gentleman, shall be discharged from the service.

*Article 47th.* All Officers, Conductors, Gunners, Matrosses, Drivers, or any other person whatever, receiving pay or hire in the service of the Massachusetts Artillery, shall be governed by the aforesaid Rules and Articles, and shall be subject to be tried by Courts Martial in like manner with the Officers and Soldiers of the Massachusetts Troops.

*Article 48th.* For differences arising among themselves, or in matters relating solely to their own Corps, the Courts Martial may be composed of their own Officers; but where a number sufficient cannot be assembled, or in matters wherein other Corps are interested, the Officers of Artillery shall sit in Courts Martial with the Officers of the other Corps.

*Article 49th.* All crimes not capital, and all disorders and neglects which Officers and Soldiers may be guilty of, to the prejudice of good order and military discipline, though not mentioned in the Articles of War, are to be taken cognizance of by a General or Regimental Court Martial, according to the nature and degree of the offence, and be punished at their discretion.

*Article 50th.* No Court Martial shall order any offenders to be whipped, or receive more than thirty-nine stripes for any one offence.

*Article 51st.* The Field Officers of each and every Regiment are to appoint some suitable person belonging to such Regiment to receive all such fines as may arise within the same, for any breach of any of the foregoing Articles, and shall direct the same to be carefully and properly applied to the relief of such sick, wounded, or necessitous Soldiers as belong to such Regiment; and such person shall account with such Officers for all fines received and the application thereof.

*Article 52d.* All members sitting in Courts Martial shall be sworn by the President of such Courts, which President shall himself be sworn by the Officer in said Court next in rank; the oaths to be administered previous to their proceeding to the trial of any offender, in form following, viz:

You, A. B., swear that you well and truly try, and impartially determine the cause of the prisoner now to be tried according to the Rules for regulating the Massachusetts Army, so help you God.

*Article 53d.* All persons called to give evidence in any case before a Court Martial, who shall refuse to give evidence, shall be punished for such refusal, at the discretion of such Court Martial.

The Oath to be administered in the form following, viz:

You swear that the evidence you shall give in the case in hearing, shall be the truth, the whole truth, and nothing but the truth, so help you God.

## IX.

## AMERICAN ARTICLES OF WAR OF 1775.

(ENACTED JUNE 30, 1775.)

*Whereas* His Majesty's most faithful subjects in these colonies are reduced to a dangerous and critical situation by the attempts of the British minister to carry into execution by force of arms several unconstitutional and oppressive acts of the British parliament for laying taxes in America, to enforce the collection of those taxes, and for altering and changing the constitution and internal police of some of these colonies, in violation of the natural and civil rights of the colonies;

*And whereas* hostilities have been actually commenced in Massachusetts Bay by the British troops under the command of General Gage, and the lives of a number of the inhabitants of that colony destroyed; the town of Boston not only having been long occupied as a garrisoned town in an enemy's country, but the inhabitants thereof treated with a severity and cruelty not to be justified even towards declared enemies;

*And whereas* large reinforcements have been ordered, and are soon expected, for the declared purpose of compelling these colonies to submit to the operation of the said acts; which hath rendered it necessary, and an indispensable duty, for the express purpose of securing and defending these colonies, and preserving them in safety against all attempts to carry the said acts into execution, that an armed force be raised sufficient to defeat such hostile designs, and preserve and defend the lives, liberties and immunities of the colonists; for the due regulating and well ordering of which;

*Resolved*, That the following Rules and Articles be attended to and observed by such forces as are or may hereafter be raised for the purposes aforesaid;

ARTICLE I. That every officer who shall be retained, and every soldier who shall serve in the continental army, shall, at the time of his acceptance of his commission or enlistment, subscribe these rules and regulations. And that the officers and soldiers, already of that army, shall also, as soon as may be, subscribe the same; from the time of which subscription every officer and soldier, shall be bound by those regulations. But if any of the officers or soldiers, now of the said army, do not subscribe these rules and regulations, then they may be retained in the said army, subject to the rules and regulations under which they entered into the service, or be discharged from the service, at the option of the commander-in-chief.

II. It is earnestly recommended to all officers and soldiers, diligently to attend divine service; and all officers and soldiers who shall behave indecently or irreverently at any place of divine worship, shall, if commissioned officers, be brought before a court-martial, there to be publicly and severely reprimanded by the president; if non-commissioned officers or soldiers, every person so offending, shall, for his first offence, forfeit

one sixth of a dollar, to be deducted out of his next pay; for the second offence, he shall not only forfeit a like sum, but be confined for twenty-four hours, and for every like offence, shall suffer and pay in like manner; which money so forfeited, shall be applied to the use of the sick soldiers of the troop or company to which the offender belongs.

III. Whatsoever non-commissioned officer or soldier shall use any profane oath or execration, shall incur the penalties expressed in the foregoing article; and if a commissioned officer be thus guilty of profane cursing or swearing, he shall forfeit and pay for each and every such offence, the sum of four shillings, lawful money.

IV. Any officer or soldier, who shall behave himself with contempt or disrespect towards the general or generals, or commanders in chief of the continental forces, or shall speak false words, tending to his or their hurt or dishonor, shall be punished according to the nature of his offence, by the judgment of a general court-martial.

V. Any officer or soldier, who shall begin, excite, cause, or join in any mutiny or sedition, in the regiment, troop, or company to which he belongs, or in any other regiment, troop or company of the continental forces, either by land or sea, or in any part, post, detachment, or guard, on any pretence whatsoever, shall suffer such punishment, as by a general court-martial shall be ordered.

VI. Any officer, non-commissioned officer, or soldier, who being present at any mutiny or sedition, does not use his utmost endeavors to suppress the same, or coming to the knowledge of any mutiny, or intended mutiny, does not, without delay, give information thereof to the commanding officer, shall be punished by order of a general court-martial, according to the nature of his offence.

VII. Any officer or soldier who shall strike his superior officer, or draw, or offer to draw, or shall lift up any weapon, or offer any violence against him, being in the execution of his office, on any pretence whatsoever, or shall disobey any lawful commands of his superior officer, shall suffer such punishment as shall, according to the nature of his offence, be ordered by the sentence of a general court-martial.

VIII. Any non-commissioned officer, or soldier, who shall desert, or without leave of his commanding officer, absent himself from the troop or company to which he belongs, or from any detachment of the same, shall, upon being convicted thereof, be punished according to the nature of his offence, at the discretion of a general court-martial.

IX. Whatsoever officer, or soldier, shall be convicted of having advised or persuaded any other officer or soldier, to desert, shall suffer such punishment, as shall be ordered by the sentence of a general court-martial.

X. All officers, of what condition soever, shall have power to part and quell all quarrels, frays, and disorders, though the persons concerned should belong to another regiment, troop, or company; and either order officers to be arrested, or non-commissioned officers, or soldiers, to be confined and imprisoned, till their proper superior officers shall be acquainted therewith; and whoever shall refuse to obey such officer, (though of an inferior rank,) or shall draw his sword upon him, shall be punished at the discretion of a general court-martial.

XI. No officer or soldier shall use any reproachful or provoking

speeches or gestures to another, nor shall presume to send a challenge to any person to fight a duel: And whoever shall, knowingly and willingly, suffer any person whatsoever to go forth to fight a duel, or shall second, promote, or carry any challenge, shall be deemed as a principal; and whatsoever officer or soldier shall upbraid another for refusing a challenge, shall also be considered as a challenger; and all such offenders, in any of these or such like cases, shall be punished at the discretion of a general court-martial.

XII. Every officer, commanding in quarters or on a march, shall keep good order, and, to the utmost of his power, redress all such abuses or disorders which may be committed by any officer or soldier under his command: If upon any complaint being made to him, of officers or soldiers beating, or otherwise ill-treating any person, or of committing any kind of riot, to the disquieting of the inhabitants of this continent; he the said commander, who shall refuse or omit to see justice done on the offender or offenders, and reparation made to the party or parties injured, as far as the offender's wages shall enable him or them, shall, upon due proof thereof, be punished as ordered by a general court-martial, in such manner as if he himself had committed the crimes or disorders complained of.

XIII. If any officer should think himself to be wronged by his colonel or the commanding officer of the regiment, and shall, upon due application made to him, be refused to be redressed, he may complain to the general or commander in chief of the continental forces, in order to obtain justice, who is hereby required to examine into said complaint, and see that justice be done.

XIV. If any inferior officer or soldier, shall think himself wronged by his captain or other officer commanding the troop or company to which he belongs, he is to complain thereof to the commanding officer of the regiment, who is hereby required to summon a regimental court-martial, for the doing justice to the complainant; from which regimental court-martial, either party may, if he thinks himself still aggrieved, appeal to a general court-martial; but if, upon a second hearing, the appeal shall appear to be vexatious and groundless, the person so appealing, shall be punished at the discretion of the general court-martial.

XV. Whatsoever non-commissioned officer or soldier shall be convicted, at a regimental court-martial, of having sold, or designedly, or through neglect, wasted the ammunition, arms, or provisions, or other military stores, delivered out to him, to be employed in the service of this continent, shall, if an officer, be reduced to a private sentinel; and if a private soldier, shall suffer such punishment as shall be ordered by a regimental court-martial.

XVI. All non-commissioned officers and soldiers, who shall be found one mile from the camp, without leave in writing from their commanding officer, shall suffer such punishment as shall be inflicted on him or them by the sentence of a regimental court-martial.

XVII. No officer or soldier shall lie out of his quarters or camp, without leave from the commanding officer of the regiment, upon penalty of being punished according to the nature of his offence, by order of a regimental court-martial.

XVIII. Every non-commissioned officer and soldier shall retire to his quarters, or tent, at the beating of the retreat; in default of which,



he shall be punished according to the nature of his offence, by order of the commanding officer.

XIX. No officer, non-commissioned officer or soldier, shall fail of repairing, at the time fixed, to the place of parade or exercise, or other rendezvous appointed by the commanding officer, if not prevented by sickness or some other evident necessity; or shall go from the said place of rendezvous, or from his guard, without leave from his commanding officer, before he shall be regularly dismissed or relieved, on penalty of being punished according to the nature of his offence, by the sentence of a regimental court-martial.

XX. Whatsoever commissioned officer shall be found drunk on his guard, party, or duty, under arms, shall be cashiered for it; any non-commissioned officer or soldier so offending, shall suffer such punishment as shall be ordered by the sentence of a regimental court-martial.

XXI. Whatsoever sentinel shall be found sleeping upon his post, or shall leave it before he shall be regularly relieved, shall suffer such punishment as shall be ordered by the sentence of a general court-martial.

XXII. Any person belonging to the continental army, who, by discharging of fire-arms, beating of drums, or by any other means whatsoever, shall occasion false alarms, in camp or quarters, shall suffer such punishment as shall be ordered by the sentence of a general court-martial.

XXIII. Any officer or soldier, who shall, without urgent necessity, or without leave of his superior officer, quit his platoon or division, shall be punished according to the nature of his offence, by the sentence of a regimental court-martial.

XXIV. No officer or soldier shall do violence, or offer any insult, or abuse, to any person who shall bring provisions, or other necessities, to the camp or quarters of the continental army; any officer or soldier so offending, shall, upon complaint being made to the commanding officer, suffer such punishment as shall be ordered by a regimental court-martial.

XXV. Whatsoever officer or soldier shall shamefully abandon any post committed to his charge, or shall speak words inducing others to do the like, in time of an engagement, shall suffer death immediately.

XXVI. Any person belonging to the continental army, who shall make known the watch-word to any person who is not entitled to receive it, according to the rules and discipline of war, or shall presume to give a parole, or watch-word, different from what he received, shall suffer death, or such other punishment as shall be ordered by the sentence of a general court-martial.

XXVII. Whosoever belonging to the continental army, shall relieve the enemy with money, victuals, or ammunition, or shall knowingly harbor or protect an enemy, shall suffer such punishment as by a general court-martial shall be ordered.

XXVIII. Whosoever belonging to the continental army, shall be convicted of holding correspondence with, or giving intelligence to, the enemy, either directly or indirectly, shall suffer such punishment as by a general court-martial shall be ordered.

XXIX. All public stores taken in the enemy's camp or magazines, whether of artillery, ammunition, clothing, or provisions, shall be secured for the use of the United Colonies.

XXX. If any officer or soldier shall leave his post or colors, in time

of an engagement, to go in search of plunder, he shall, upon being convicted thereof before a general court-martial, suffer such punishment as by the said court-martial shall be ordered.

XXXI. If any commander of any post, intrenchment, or fortress, shall be compelled, by the officers or soldiers under his command, to give it up to the enemy, or to abandon it, the commissioned officer, non-commissioned officers, or soldiers, who shall be convicted of having so offended, shall suffer death, or such other punishment as may be inflicted upon them by the sentence of a general court-martial.

XXXII. All suttlers and retailers to a camp, and all persons whatsoever, serving with the continental army in the field, though not enlisted soldiers, are to be subject to the articles, rules, and regulations of the continental army.

XXXIII. No general court-martial shall consist of a less number than thirteen, none of which shall be under the degree of a commissioned officer; and the president shall be a field officer: And the president of each and every court-martial, whether general or regimental, shall have power to administer an oath to every witness, in order to the trial of offenders. And the members of all courts-martial shall be duly sworn by the president; and the next in rank on the court-martial, shall administer the oath to the president.

XXXIV. The members, both of general and regimental courts-martial, shall, when belonging to different corps, take the same rank which they hold in the army; but when courts-martial shall be composed of officers of one corps, they shall take their ranks according to their commissions by which they are mustered in the said corps.

XXXV. All the members of a court-martial, are to behave with calmness, decency, and impartiality; and in giving their votes, are to begin with the youngest or lowest in commission.

XXXVI. No field officer shall be tried by any person under the degree of a captain; nor shall any proceedings or trials be carried on, excepting between the hours of eight in the morning, and three in the afternoon, except in cases which require an immediate example.

XXXVII. The commissioned officers of every regiment may, by the appointment of their colonel or commanding officer, hold regimental courts-martial for the enquiring into such disputes or criminal matters as may come before them, and for the inflicting corporeal punishment, for small offences, and shall give judgment by the majority of voices; but no sentence shall be executed till the commanding officer (not being a member of the court-martial) shall have confirmed the same.

XXXVIII. No regimental court-martial shall consist of less than five officers, excepting in cases where that number can not be conveniently assembled, when three may be sufficient; who are likewise to determine upon the sentence by the majority of voices; which sentence is to be confirmed by the commanding officer, not being a member of the court-martial.

XXXIX. Every officer, commanding in any fort, castle, or barrack, or elsewhere, where the corps under his command consists of detachments from different regiments or of independent companies, may assemble courts-martial for the trial of offenders in the same manner as if they were regimental, whose sentence is not to be executed till it shall be confirmed by the said commanding officer.

XL. No person whatsoever shall use menacing words, signs, or gestures in the presence of a court-martial then sitting, or shall cause any disorder or riot, so as to disturb their proceeding, on the penalty of being punished at the discretion of the said court-martial.

XLI. To the end that offenders may be brought to justice; whenever any officer or soldier shall commit a crime deserving punishment, he shall, by his commanding officer, if an officer, be put in arrest; if a non-commissioned officer or soldier, be imprisoned till he shall be either tried by a court-martial, or shall be lawfully discharged by proper authority.

XLII. No officer or soldier who shall be put in arrest, or imprisonment, shall continue in his confinement more than eight days, or till such time as a court-martial can be conveniently assembled.

XLIII. No officer commanding a guard, or provost-marshal, shall refuse to receive or keep any prisoner committed to his charge, by an officer belonging to the continental forces; which officer shall at the same time deliver an account in writing, signed by himself, of the crime with which the said prisoner is charged.

XLIV. No officer commanding a guard, or provost-marshal, shall presume to release any prisoner committed to his charge, without proper authority for so doing; nor shall he suffer any prisoner to escape, on the penalty of being punished for it, by the sentence of a general court-martial.

XLV. Every officer or provost-martial, to whose charge prisoners shall be committed, is hereby required, within twenty-four hours after such commitment, or as soon as he shall be relieved from his guard, to give in writing to the colonel of the regiment to whom the prisoner belongs (where the prisoner is confined upon the guard belonging to the said regiment, and that his offence only relates to the neglect of duty in his own corps) or to the commander in chief, their names, their crimes, and the names of the officers who committed them, on the penalty of being punished for his disobedience or neglect, at the discretion of a general court-martial.

XLVI. And if any officer under arrest shall leave his confinement before he is set at liberty by the officer who confined him, or by a superior power, he shall be cashiered for it.

XLVII. Whatsoever commissioned officer shall be convicted before a general court-martial, of behaving in a scandalous, infamous manner, such as is unbecoming the character of an officer and a gentleman, shall be discharged from the service.

XLVIII. All officers, conductors, gunners, matrosses, drivers, or any other persons whatsoever, receiving pay or hire, in the service of the continental artillery, shall be governed by the aforesaid rules and articles, and shall be subject to be tried by courts-martial, in like manner with the officers and soldiers of the continental troops.

XLIX. For differences arising amongst themselves, or in matters relating solely to their own corps, the courts-martial may be composed of their own officers; but where a number sufficient of such officers cannot be assembled, or in matters wherein other corps are interested, the officers of artillery shall sit in courts-martial, with the officers of the other corps.

L. All crimes, not capital, and all disorders and neglects, which offi-

cers and soldiers may be guilty of, to the prejudice of good order and military discipline, though not mentioned in the articles of war, are to be taken cognizance of by a general or regimental court-martial, according to the nature and degree of the offence, and be punished at their discretion.

LI. That no persons shall be sentenced by a court-martial to suffer death, except in the cases expressly mentioned in the foregoing articles; nor shall any punishment be inflicted at the discretion of a court-martial, other than degrading, cashiering, drumming out of the army, whipping not exceeding thirty-nine lashes, fine not exceeding two months pay of the offender, imprisonment not exceeding one month.

LII. The field officers of each and every regiment are to appoint some suitable person belonging to such regiment, to receive all such fines as may arise within the same, for any breach of any of the foregoing articles, and shall direct the same to be carefully and properly applied to the relief of such sick, wounded, or necessitous soldiers as belong to such regiment; and such person shall account with such officer for all fines received, and the application thereof.

LIII. All members sitting in courts-martial shall be sworn by the president of said courts, which president shall himself be sworn by the officer in said court next in rank:—The oath to be administered previous to their proceeding to the trial of any offender, in form following, viz.

“You A. B. swear that you will well and truly try, and impartially determine the cause of the prisoner now to be tried, according to the rules for regulating the continental army. So help you God.”

LIV. All persons called to give evidence, in any case, before a court-martial, who shall refuse to give evidence, shall be punished for such refusal at the discretion of such court-martial:—The oath to be administered in the following form, viz.

“You swear the evidence you shall give in the case now in hearing, shall be the truth, the whole truth, and nothing but the truth. So help you God.”

LV. Every officer commanding a regiment, troop, or company, shall, upon notice given to him by the commissary of the musters, or from one of his deputies, assemble the regiment, troop, or company under his command, in the next convenient place for their being mustered.

LVI. Every colonel, or other field officer, or officer commanding any corps, to which there is no field officer, and actually residing with it, may give furloughs to non-commissioned officers and soldiers, in such numbers, and for so long a time, as he shall judge to be most consistent with the good of the service; but no non-commissioned officer or soldier shall, by leave of his captain, or inferior officer, commanding the troop or company (his field officer not being present) be absent above twenty days in six months, nor shall more than two private men be absent at the same time from their troop or company, excepting some extraordinary occasion should require it, of which occasion the field officer present with, and commanding the regiment or independent corps, is to be judge.

LVII. At every muster the commanding officer of each regiment, troop, or company then present, shall give to the commissary of mus-

ters certificates signed by himself, signifying how long such officers, non-commissioned officers, and soldiers, who shall not appear at the said muster, have been absent, and the reason of their absence; which reasons, and the time of absence, shall be inserted in the muster rolls, opposite to the respective names of such absentees : The said certificates shall, together with the muster rolls, be by the said commissary transmitted to the general, and to this or any future Congress of the United Colonies, or committee appointed thereby, within twenty days next after such muster being taken ; on failure whereof, the commissary so offending shall be discharged from the service.

LVIII. Every officer who shall be convicted before a general court-martial of having signed a false certificate, relating to the absence of either officers, non-commissioned officer or private soldier, shall be cashiered.

LIX. Every officer, who shall knowingly make a false muster of man or horse, and every officer or commissary who shall willingly sign, direct, or allow the signing of the muster rolls, wherein such false muster is contained, shall, upon proof made thereof, by two witnesses, before a general court-martial, be cashiered, and moreover forfeit all such pay as may be due to him at the time of conviction for such offence.

LX. Any commissary who shall be convicted of having taken any gift or gratuity on the mustering any regiment, troop, or company, or on the signing the muster rolls, shall be displaced from his office, and forfeit his pay, as in the preceding article.

LXI. Any officer who shall presume to muster any person as a soldier, who is at other times accustomed to wear a livery, or who does not actually do his duty as a soldier, shall be deemed guilty of having made a false muster, and shall suffer accordingly.

LXII. Every officer who shall knowingly make a false return to the commander in chief of the American forces, or to any his superior officer, authorized to call for such returns, of the state of the regiment, troop, independent company, or garrison under his command, or of arms, ammunition, clothing, or other stores thereunto belonging, shall by a court-martial be cashiered.

LXIII. The commanding officer of every regiment, troop, independent company, or garrison, in the service aforesaid, shall, in the beginning of every month, remit to the commander in chief of said forces, an exact return of the state of the regiment, troop, independent company, or garrison under his command, specifying the names of the officers not then residing at their posts, and the reason for, and the time of their absence : whoever shall be convicted of having, through neglect or design, omitted the sending such returns, shall be punished according to the nature of his crime, by the judgment of a general court-martial.

LXIV. No suttler shall be permitted to sell any kind of liquors or victuals, or to keep their houses or shops open, for the entertainment of soldiers, after nine at night, or before the beating of the reveilles, or upon Sundays during divine service or sermon, on the penalty of being dismissed from all future suttling.

LXV. All officers commanding in the camp, or in any forts, barracks, or garrisons, are hereby required to see that the persons permitted to

suttle shall supply the soldiers with good and wholesome provisions at a reasonable price, as they shall be answerable for their neglect.

LXVI. No officer commanding in any camp, garrisons, forts, or barracks, shall either themselves exact exorbitant prices for houses or stalls let out to suttlers, or shall connive at the like exactions in others, nor lay any duty or impositions upon, or be interested in the sale of such victuals, liquors, or other necessities of life, which are brought into the camp, garrison, fort, or barracks, for the use of the soldiers, on the penalty of being discharged from the service.

LXVII. That the general, or commander in chief for the time being, shall have full power of pardoning, or mitigating any of the punishments ordered to be inflicted, for any of the offences mentioned in the foregoing articles; and every offender, convicted as aforesaid, by any regimental court-martial, may be pardoned, or have his punishment mitigated by the colonel or officer commanding the regiment.

LXVIII. When any commissioned officer shall happen to die, or be killed in the service of the United Colonies, the major of the regiment, or the officer doing the major's duty in his absence, shall immediately secure all his effects or equipage, then in camp or quarters; and shall, before the next regimental court-martial, make an inventory thereof, and forthwith transmit to the office of the secretary of the Congress, or assembly of the province in which the corps is stationed or shall happen to be at the time of the death of such officer; to the end that his executors may, after payment of his debts in quarters, and interment, receive the overplus, if any be, to his or their use.

LXIX. When any non-commissioned officer or private soldier, shall happen to die, or be killed in the service of the United Colonies, the then commanding officer of the troop or company, shall, in the presence of two other commissioned officers, take an account of whatever effects he dies possessed of, and transmit the same, as in the case above provided for, in order that the same may be secured for, and paid to their respective representatives.

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#### ADDITIONAL ARTICLES, ENACTED NOV. 7, 1775.

*Resolved*, That the following additions and alterations or amendments, be made in the Rules and Regulations of the continental army.

1. All persons convicted of holding a treacherous correspondence with, or giving intelligence to the enemy, shall suffer death, or such other punishment as a general court-martial shall think proper.

2. All commissioned officers found guilty by a general court-martial of any fraud or embezzlement, shall forfeit all his pay, be *ipso facto* cashiered, and deemed unfit for further service as an officer.

3. All non-commissioned officers and soldiers, convicted before a regimental court-martial of stealing, embezzling or destroying ammunition, provision, tools, or anything belonging to the public stores, if a non-commissioned officer, to be reduced to the ranks, and punished with whipping, not less than fifteen, nor more than thirty-nine lashes, at the discretion of the court-martial; if a private soldier with the same corporeal punishment.

4. In all cases where a commissioned officer is cashiered for cowardice or fraud, it be added in the punishment, that the crime, name, place of abode, and punishment of the delinquent be published in the newspapers, in and about the camp, and of that colony from which the offender came, or usually resides; after which it shall be deemed scandalous in any officer to associate with him.

5. Any officer or soldier, who shall begin, excite, cause, or join in any mutiny or sedition in the regiment, troop, or company to which he belongs, or in any other regiment, troop, or company of the continental forces, either by land or sea, or in any party, post, detachment or guard, on any pretence whatsoever, shall suffer death, or such other punishment, as a general court-martial shall direct.

6. Any officer or soldier, who shall desert to the enemy, and afterwards be taken, shall suffer death, or such other punishment as a general court-martial shall direct.

7. Whatsoever commissioned officer shall be found drunk on his guard, party, or other duty under arms, shall be cashiered and drummed out of the army with infamy; any non-commissioned officer or soldier, so offending, shall be sentenced to be whipt, not less than twenty, nor more than thirty-nine lashes, according to the nature of the offence.

8. Whatsoever officer or soldier, placed as a sentinel, shall be found sleeping upon his post, or shall leave it before he shall be regularly relieved, if a commissioned officer, shall be cashiered, and drummed out of the army with infamy; if a non-commissioned officer or soldier, shall be sentenced to be whipt, not less than twenty, nor more than thirty-nine lashes, according to the nature of the offence.

9. No officer or soldier shall lie out of his quarters or camp, without leave from the commanding officer of the regiment, upon penalty, if an officer, of being mulcted one month's pay for the first offence, and cashiered for the second; if a non-commissioned officer or soldier, of being confined seven days on bread and water for the first offence; and the same punishment and a forfeiture of a week's pay for the second.

10. Whatsoever officer or soldier shall misbehave himself before the enemy, or shamefully abandon any post committed to his charge, or shall speak words inducing others to do the like, shall suffer death.

11. All public stores taken in the enemy's camp or magazines, whether of artillery, ammunition, clothing, or provisions, shall be secured for the use of the United Colonies: and all commissioned officers, found guilty, by general court-martial, of embezzling the same, or any of them, shall forfeit all his pay, be *ipso facto* cashiered, and deemed unfit for farther service as an officer. And all non-commissioned officers and soldiers, convicted before a regimental court-martial of stealing or embezzling the same, if a non-commissioned officer, shall be reduced to the ranks, and punished with whipping, not less than fifteen, nor more than thirty-nine lashes, at the discretion of the court-martial; if a private soldier, with the same punishment.

12. If any officer or soldier, shall leave his post or colours, in time of an engagement, to go in search of plunder, he shall, if a commissioned officer, be cashiered, and drummed out of the army with infamy, and forfeit all share of plunder; if a non-commissioned officer or soldier, be whipped, not less than twenty, nor more than thirty-nine lashes, according to the nature of the offence, and forfeit all share of the plunder taken from the enemy.

13. Every officer commanding a regiment, troop, or company, shall, upon notice given to him by the commissary of the musters, or from one of his deputies, assemble the regiment, troop, or company under his command, in the next convenient place for their being mustered, on penalty of his being cashiered, and mulcted of his pay.

14. At every muster, the commanding officer of each regiment, troop or company there present, shall give to the commissary of musters, certificates signed by himself, signifying how long such officers, non-commissioned officers and soldiers, who shall not appear at the said muster, have been absent, and the reason of their absence, which reasons and the time of absence, shall be inserted in the muster rolls, opposite the names of such absentees: and the surgeons or their mates, shall at the same time give to the commissary of musters a certificate signed by them, signifying the state of health or sickness of those under their care, and the said certificate shall, together with the muster rolls, be by the said commissary transmitted to the general, and to this or any future Congress of the United Colonies, or committee appointed thereby, within twenty days next after such muster being taken, on failure whereof, the commissary so offending, shall be discharged from the service.

15. Every officer who shall be convicted before a general court-martial, of having signed a false certificate relating to the absence of either officer, non-commissioned officer, or private soldier; and every surgeon or mate, convicted of signing a false certificate, relating to the health or sickness of those under his care, shall be cashiered.

16. All officers and soldiers who shall wilfully, or through negligence, disobey any general or special orders, shall be punished at the discretion of a regimental court-martial, where the offence is against a regimental order, and at the discretion of a general court-martial, where the offence is against an order given from the commander in chief, or the commanding officer of any detachment or post, and such general court-martial can be had.



## X.

## AMERICAN ARTICLES OF WAR OF 1776.

(ENACTED SEPTEMBER 20, 1776.)

*Resolved*, That from and after the publication of the following Articles, in the respective armies of the United States, the Rules and Articles by which the said armies have heretofore been governed shall be, and they are hereby, repealed :

## SECTION I.

*Article 1.* That every officer who shall be retained in the army of the United States, shall, at the time of his acceptance of his commission, subscribe these rules and regulations.

*Art. 2.* It is earnestly recommended to all officers and soldiers diligently to attend divine service ; and all officers and soldiers who shall behave indecently, or irreverently, at any place of divine worship, shall, if commissioned officers, be brought before a general court-martial, there to be publicly and severely reprimanded by the president; if non-commissioned officers or soldiers, every person so offending shall, for his first offence, forfeit  $\frac{1}{6}$ th of a dollar, to be deducted out of his next pay; for the second offence, he shall not only forfeit a like sum, but be confined for twenty-four hours; and, for every like offence, shall suffer and pay in like manner; which money, so forfeited, shall be applied to the use of the sick soldiers of the troop or company to which the offender belongs.

*Art. 3.* Whatsoever non-commissioned officer or soldier shall use any prophane oath or execration, shall incur the penalties expressed in the foregoing article ; and if a commissioned officer be thus guilty of prophane cursing or swearing, he shall forfeit and pay, for each and every such offence, two-thirds of a dollar.

*Art. 4.* Every chaplain who is commissioned to a regiment, company, troop, or garrison, and shall absent himself from the said regiment, company, troop, or garrison, (excepting in case of sickness or leave of absence,) shall be brought to a court-martial, and be fined not exceeding one month's pay, besides the loss of his pay during his absence, or be discharged, as the said court-martial shall judge most proper.

## SECTION II.

*Art. 1.* Whatsoever officer or soldier shall presume to use traitorous or disrespectful words against the authority of the United States in Congress assembled, or the legislature of any of the United States in which he may be quartered, if a commissioned officer, he shall be cashiered ; if a non-commissioned officer or soldier, he shall suffer such punishment as shall be inflicted upon him by the sentence of a court-martial.

*Art. 2.* Any officer or soldier who shall behave himself with contempt

or disrespect towards the general, or other commander-in-chief of the forces of the United States, or shall speak words tending to his hurt or dishonor, shall be punished according to the nature of his offence, by the judgment of a court-martial.

*Art. 3.* Any officer or soldier who shall begin, excite, cause or join, in any mutiny or sedition, in the troop, company or regiment to which he belongs, or in any other troop or company in the service of the United States, or in any part, post, detachment or guard, on any pretence whatsoever, shall suffer death, or such other punishment as by a court-martial shall be inflicted.

*Art. 4.* Any officer, non-commissioned officer, or soldier, who, being present at any mutiny or sedition, does not use his utmost endeavor to suppress the same, or coming to the knowledge of any intended mutiny, does not, without delay, give information thereof to his commanding officer, shall be punished by a court-martial with death, or otherwise, according to the nature of the offence.

*Art. 5.* Any officer or soldier who shall strike his superior officer, or draw, or shall lift up any weapon, or offer any violence against him, being in the execution of his office, on any pretence whatsoever, or shall disobey any lawful command of his superior officer, shall suffer death, or such other punishment as shall, according to the nature of his offence, be inflicted upon him by the sentence of a court-martial.

### SECTION III.

*Art. 1.* Every non-commissioned officer and soldier, who shall enlist himself in the service of the United States, shall at the time of his so enlisting, or within six days afterwards, have the articles for the government of the forces of the United States read to him, and shall, by the officer who enlisted him, or by the commanding officer of the troop or company into which he was enlisted, be taken before the next justice of the peace, or chief magistrate of any city or town-corporate, not being an officer of the army, or, where recourse cannot be had to the civil magistrate, before the judge advocate, and, in his presence, shall take the following oath, or affirmation, if conscientiously scrupulous about taking an oath:

I swear, or affirm, (as the case may be,) to be true to the United States of America, and to serve them honestly and faithfully against all their enemies or opposers whatsoever; and to observe and obey the orders of the Continental Congress, and the orders of the generals and officers set over me by them.

Which justice or magistrate is to give the officer a certificate, saying that the man enlisted did take the said oath or affirmation.

*Art. 2.* After a non-commissioned officer or soldier shall have been duly enlisted and sworn, he shall not be dismissed the service without a discharge in writing; and no discharge, granted to him, shall be allowed of as sufficient, which is not signed by a field officer of the regiment into which he was enlisted, or commanding officer, where no field officer of the regiment is in the same state.

### SECTION IV.

*Art. 1.* Every officer commanding a regiment, troop, or company, shall, upon the notice given to him by the commissary of musters; or

from one of his deputies, assemble the regiment, troop, or company, under his command, in the next convenient place for their being mustered.

*Art. 2.* Every colonel or other field officer commanding the regiment, troop, or company, and actually residing with it, may give furloughs to non-commissioned officers and soldiers, in such numbers, and for so long a time, as he shall judge to be most consistent with the good of the service; but, no non-commissioned officer or soldier shall, by leave of his captain, or inferior officer, commanding the troop or company (his field officer not being present) be absent above twenty days in six months, nor shall more than two private men be absent at the same time from their troop or company, excepting some extraordinary occasion shall require it, of which occasion the field officer, present with, and commanding the regiment, is to be the judge.

*Art. 3.* At every muster, the commanding officer of each regiment, troop, or company, there present, shall give to the commissary, certificates signed by himself, signifying how long such officers, who shall not appear at the said muster, have been absent, and the reason of their absence; in like manner, the commanding officer of every troop or company shall give certificates, signifying the reasons of the absence of the non-commissioned officers and private soldiers; which reasons, and time of absence, shall be inserted in the muster-rolls, opposite to the names of the respective absent officers and soldiers: The said certificates shall, together with the muster-rolls, be remitted by the commissary to the Congress, as speedily as the distance of place will admit.

*Art. 4.* Every officer who shall be convicted before a general court-martial of having signed a false certificate, relating to the absence of either officer or private soldier, shall be cashiered.

*Art. 5.* Every officer who shall knowingly make a false muster of man or horse, and every officer or commissary who shall willingly sign, direct, or allow the signing of the muster-rolls, wherein such false muster is contained, shall, upon proof made thereof by two witnesses before a general court-martial, be cashiered, and shall be thereby utterly disabled to have or hold any office or employment in the service of the United States.

*Art. 6.* Any commissary who shall be convicted of having taken money, or any other thing, by way of gratification, on the mustering of any regiment, troop, or company, or on the signing the muster-rolls, shall be displaced from his office, and shall be thereby utterly disabled to have or hold any office or employment under the United States.

*Art. 7.* Any officer who shall presume to muster any person as a soldier, who is, at other times, accustomed to wear a livery, or who does not actually do his duty as a soldier, shall be deemed guilty of having made a false muster, and shall suffer accordingly.

#### SECTION V.

*Art. 1.* Every officer who shall knowingly make a false return to the Congress, or, any committee thereof, to the commander in chief of the forces of the United States, or to any his superior officer authorized to call for such returns, of the state of the regiment, troop, or company, or garrison, under his command, or of arms, ammunition, clothing, or other stores thereunto belonging, shall, by a court-martial, be cashiered.

*Art. 2.* The commanding officer of every regiment, troop, or independent company, or garrison of the United States, shall, in the begin-

ning of every month, remit to the commander in chief of the American forces, and to the Congress, an exact return of the state of the regiment, troop, independent company, or garrison under his command, specifying the names of the officers not then residing at their posts, and the reason for, and time of, their absence: Whoever shall be convicted of having, through neglect or design, omitted the sending such returns, shall be punished according to the nature of his crime, by the judgment of a general court-martial.

#### SECTION VI.

*Art. 1.* All officers and soldiers, who having received pay, or having been duly inlisted in the service of the United States, shall be convicted of having deserted the same, shall suffer death, or such other punishment as by a court-martial shall be inflicted.

*Art. 2.* Any non-commissioned officer or soldier, who shall, without leave from his commanding officer, absent himself from his troop or company, or from any detachment with which he shall be commanded, shall, upon being convicted thereof, be punished, according to the nature of his offence, at the discretion of a court-martial.

*Art. 3.* No non-commissioned officer or soldier shall inlist himself in any other regiment, troop or company, without a regular discharge from the regiment, troop or company, in which he last served, on the penalty of being reputed a deserter, and suffering accordingly: And in case any officer shall, knowingly, receive and entertain such non-commissioned officer or soldier, or shall not, after his being discovered to be a deserter, immediately confine him, and give notice thereof to the corps in which he last served, he, the said officer so offending, shall, by a court-martial, be cashiered.

*Art. 4.* Whatsoever officer or soldier shall be convicted of having advised or persuaded any other officer or soldier to desert the service of the United States, shall suffer such punishment as shall be inflicted upon him by the sentence of a court-martial.

#### SECTION VII.

*Art. 1.* No officer or soldier shall use any reproachful or provoking speeches or gestures to another, upon pain, if an officer, of being put in arrest; if a soldier, imprisoned, and of asking pardon of the party offended, in the presence of his commanding officer.

*Art. 2.* No officer or soldier shall presume to send a challenge to any other officer or soldier, to fight a duel, upon pain, if a commissioned officer, of being cashiered, if a non-commissioned officer or soldier, of suffering corporeal punishment, at the discretion of a court-martial.

*Art. 3.* If any commissioned or non-commissioned officer commanding a guard, shall, knowingly and willingly, suffer any person whatsoever to go forth to fight a duel, he shall be punished as a challenger: And likewise all seconds, promoters, and carriers of challenges, in order to duels, shall be deemed as principals, and be punished accordingly.

*Art. 4.* All officers, of what condition soever, have power to part and quell all quarrels, frays and disorders, though the persons concerned should belong to another regiment, troop or company; and either to order officers into arrest, or non-commissioned officers or soldiers to prison, till their proper superior officers shall be acquainted therewith; and whosoever shall refuse to obey such officer (though of an inferior

rank) or shall draw his sword upon him, shall be punished at the discretion of a general court-martial.

*Art. 5.* Whatsoever officer or soldier shall upbraid another for refusing a challenge, shall himself be punished as a challenger; and all officers and soldiers are hereby discharged of any disgrace, or opinion of disadvantage, which might arise from their having refused to accept of challenges, as they will only have acted in obedience to the orders of Congress, and done their duty as good soldiers, who subject themselves to discipline.

#### SECTION VIII.

*Art. 1.* No suttler shall be permitted to sell any kind of liquors or victuals, or to keep their houses or shops open, for the entertainment of soldiers, after nine at night, or before the beating of the reveilles, or upon Sundays, during the divine service, or sermon, on the penalty of being dismissed from all future suttling.

*Art. 2.* All officers, soldiers and suttlers, shall have full liberty to bring into any of the forts or garrisons of the United American States, any quantity or species of provisions, eatable or drinkable, except where any contract or contracts are, or shall be entered into by Congress, or by their order, for furnishing such provisions, and with respect only to the species of provisions so contracted for.

*Art. 3.* All officers, commanding in the forts, barracks, or garrisons of the United States, are hereby required to see, that the persons permitted to suttle, shall supply the soldiers with good and wholesome provisions at the market price, as they shall be answerable for their neglect.

*Art. 4.* No officers, commanding in any of the garrisons, forts, or barracks of the United States, shall either themselves exact exorbitant prices for houses or stalls let out to suttlers, or shall connive at the like exactions in others; nor, by their own authority and for their private advantage, shall they lay any duty or imposition upon, or be interested in the sale of such victuals, liquors or other necessities of life, which are brought into the garrison, fort, or barracks, for the use of the soldiers, on the penalty of being discharged from the service.

#### SECTION IX.

*Art. 1.* Every officer commanding in quarters, garrisons, or on a march, shall keep good order, and, to the utmost of his power, redress all such abuses or disorders which may be committed by any officer or soldier under his command; if, upon complaint made to him of officers or soldiers beating, or otherwise ill-treating any person; of disturbing fairs or markets, or of committing any kind of riots to the disquieting of the good people of the United States; he the said commander, who shall refuse or omit to see justice done on the offender or offenders, and reparation made to the party or parties injured, as far as part of the offenders pay shall enable him or them, shall, upon proof thereof, be punished, by a general court-martial, as if he himself had committed the crimes or disorders complained of.

#### SECTION X.

*Art. 1.* Whenever any officer or soldier shall be accused of a capital crime, or of having used violence, or committed any offence against the

persons or property of the good people of any of the United American States, such as is punishable by the known laws of the land, the commanding officer and officers of every regiment, troop, or party, to which the person or persons so accused shall belong, are hereby required, upon application duly made by or in behalf of the party or parties injured, to use his utmost endeavors to deliver over such accused person or persons to the civil magistrate ; and likewise to be aiding and assisting to the officers of justice in apprehending and securing the person or persons so accused, in order to bring them to a trial. If any commanding officer or officers shall wilfully neglect or shall refuse, upon the application aforesaid, to deliver over such accused person or persons to the civil magistrates, or to be aiding and assisting to the officers of justice in apprehending such person or persons, the officer or officers so offending shall be cashiered.

*Art. 2.* No officer shall protect any person from his creditors, on the pretence of his being a soldier, nor any non-commissioned officer or soldier who does not actually do all duties as such, and no farther than is allowed by a resolution of Congress, bearing date the 26th day of December, 1775. Any officer offending herein, being convicted thereof before a court-martial, shall be cashiered.

#### SECTION XI.

*Art. 1.* If any officer shall think himself to be wronged by his colonel, or the commanding officer of the regiment, and shall, upon due application made to him, be refused to be redressed, he may complain to the general, commanding in chief the forces of the United States, in order to obtain justice, who is hereby required to examine into the said complaint, and, either by himself, or the board of war, to make report to Congress thereupon, in order to receive further directions.

*Art. 2.* If any inferior officer or soldier shall think himself wronged by his captain, or other officer commanding the troop or company to which he belongs, he is to complain thereof to the commanding officer of the regiment, who is hereby required to summon a regimental court-martial, for the doing justice to the complainant ; from which regimental court-martial either party may, if he thinks himself still aggrieved, appeal to a general court-martial ; but if, upon a second hearing, the appeal shall appear to be vexatious and groundless, the person so appealing shall be punished at the discretion of the said general court-martial.

#### SECTION XII.

*Art. 1.* Whatsoever commissioned officer, store-keeper, or commissary, shall be convicted at a general court-martial of having sold (without a proper order for that purpose) embezzled, misapplied, or wilfully, or through neglect, suffered any of the provisions, forage, arms, clothing, ammunition, or other military stores belonging to the United States, to be spoiled or damaged, the said officer, store-keeper, or commissary so offending, shall, at his own charge, make good the loss or damage, shall moreover forfeit all his pay, and be dismissed from the service.

*Art. 2.* Whatsoever non-commissioned officer or soldier shall be convicted, at a regimental court-martial, of having sold, or designedly, or through neglect, wasted the ammunition delivered out to him to be employed in the service of the United States, shall, if a non-commissioned officer, be reduced to a private sentinel, and shall besides suffer corporeal

punishment in the same manner as a private sentinel so offending, at the discretion of a regimental court-martial.

*Art. 3.* Every non-commissioned officer or soldier who shall be convicted at a court-martial of having sold, lost or spoiled, through neglect, his horse, arms, clothes or accoutrements shall undergo such weekly stoppages (not exceeding the half of his pay) as a court-martial shall judge sufficient for repairing the loss or damage; and shall suffer imprisonment, or such other corporeal punishment, as his crime shall deserve.

*Art. 4.* Every officer who shall be convicted at a court-martial of having embezzled or misapplied any money with which he may have been entrusted for the payment of the men under his command, or for inlisting men into the service, if a commissioned officer, shall be cashiered and compelled to refund the money, if a non-commissioned officer, shall be reduced to serve in the ranks as a private soldier, be put under stoppages until the money be made good, and suffer such corporeal punishment, (not extending to life or limb) as the court-martial shall think fit.

*Art. 5.* Every captain of a troop or company is charged with the arms, accoutrements, ammunition, clothing, or other warlike stores belonging to the troop or company under his command, which he is to be accountable for to his colonel, in case of their being lost, spoiled, or damaged, not by unavoidable accidents, or on actual service.

### SECTION XIII.

*Art. 1.* All non-commissioned officers and soldiers, who shall be found one mile from the camp, without leave, in writing, from their commanding officer, shall suffer such punishment as shall be inflicted upon them by the sentence of a court-martial.

*Art. 2.* No officer or soldier shall lie out of his quarters, garrison, or camp, without leave from his superior officer, upon penalty of being punished according to the nature of his offence, by the sentence of a court-martial.

*Art. 3.* Every non-commissioned officer and soldier shall retire to his quarters or tent at the beating of the retreat; in default of which he shall be punished, according to the nature of his offence, by the commanding officer.

*Art. 4.* No officer, non-commissioned officer, or soldier, shall fail of repairing, at the time fixed, to the place of parade or exercise, or other rendezvous appointed by his commanding officer, if not prevented by sickness, or some other evident necessity; or shall go from the said place of rendezvous, or from his guard, without leave from his commanding officer, before he shall be regularly dismissed or relieved, on the penalty of being punished according to the nature of his offence, by the sentence of a court-martial.

*Art. 5.* Whatever commissioned officer shall be found drunk on his guard, party, or other duty under arms, shall be cashiered for it; any non-commissioned officer or soldier so offending, shall suffer such corporeal punishment as shall be inflicted by the sentence of a court-martial.

*Art. 6.* Whatever sentinel shall be found sleeping upon his post, or shall leave it before he shall be regularly relieved, shall suffer death, or such other punishment as shall be inflicted by the sentence of a court-martial.

*Art. 7.* No soldier belonging to any regiment, troop, or company, shall hire another to do his duty for him, or be excused from duty, but in case of sickness, disability, or leave of absence; and every such soldier found guilty of hiring his duty, as also the party so hired to do another's duty, shall be punished at the next regimental court-martial.

*Art. 8.* And every non-commissioned officer conniving at such hiring of duty as aforesaid, shall be reduced for it; and every commissioned officer, knowing and allowing of such ill-practices in the service, shall be punished by the judgment of a general court-martial.

*Art. 9.* Any person, belonging to the forces employed in the service of the United States, who, by discharging of fire-arms, drawing of swords, beating of drums, or by any other means whatsoever, shall occasion false alarms in camp, garrison, or quarters, shall suffer death, or such other punishment as shall be ordered by the sentence of a general court-martial.

*Art. 10.* Any officer or soldier who shall, without urgent necessity, or without the leave of his superior officer, quit his platoon or division, shall be punished, according to the nature of his offence, by the sentence of a court-martial.

*Art. 11.* No officer or soldier shall do violence to any person who brings provisions or other necessaries to the camp, garrison or quarters of the forces of the United States employed in parts out of said states, on pain of death, or such other punishment as a court-martial shall direct.

*Art. 12.* Whatsoever officer or soldier shall misbehave himself before the enemy, or shamefully abandon any post committed to his charge, or shall speak words inducing others to do the like, shall suffer death.

*Art. 13.* Whatsoever officer or soldier shall misbehave himself before the enemy, and run away, or shamefully abandon any fort, post or guard, which he or they shall be commanded to defend, or speak words inducing others to do the like; or who, after victory, shall quit his commanding officer, or post, to plunder and pillage: Every such offender, being duly convicted thereof, shall be reputed a disobeyer of military orders; and shall suffer death, or such other punishment, as, by a general court-martial, shall be inflicted on him.

*Art. 14.* Any person, belonging to the forces of the United States, who shall cast away his arms and ammunition, shall suffer death, or such other punishment as shall be ordered by the sentence of a general court-martial.

*Art. 15.* Any person belonging to the forces of the United States, who shall make known the watch-word to any person who is not entitled to receive it according to the rules and discipline of war, or shall presume to give a parole or watch-word different from what he received, shall suffer death, or such other punishment as shall be ordered by the sentence of a general court-martial.

*Art. 16.* All officers and soldiers are to behave themselves orderly in quarters, and on their march; and whosoever shall commit any waste or spoil, either in walks of trees, parks, warrens, fish-ponds, houses or gardens, corn-fields, enclosures or meadows, or shall maliciously destroy any property whatsoever belonging to the good people of the United States, unless by order of the then commander in chief of the forces of the said states, to annoy rebels or other enemies in arms against said states, he or they that shall be found guilty of offending herein, shall



(besides such penalties as they are liable to by law) be punished according to the nature and degree of the offence, by the judgment of a regimental or general court-martial.

*Art. 17.* Whosoever, belonging to the forces of the United States, employed in foreign parts, shall force a safe-guard, shall suffer death.

*Art. 18.* Whosoever shall relieve the enemy with money, victuals, or ammunition, or shall knowingly harbor or protect an enemy, shall suffer death, or such other punishment as by a court-martial shall be inflicted.

*Art. 19.* Whosoever shall be convicted of holding correspondence with, or giving intelligence to the enemy, either directly or indirectly, shall suffer death, or such other punishment as by a court-martial shall be inflicted.

*Art. 20.* All public stores taken in the enemy's camp, towns, forts, or magazines, whether of artillery, ammunition, clothing, forage, or provisions, shall be secured for the service of the United States; for the neglect of which the commanders in chief are to be answerable.

*Art. 21.* If any officer or soldier shall leave his post or colors to go in search of plunder, he shall upon being convicted thereof before a general court-martial, suffer death, or such other punishment as by a court-martial shall be inflicted.

*Art. 22.* If any commander of any garrison, fortress, or post, shall be compelled by the officers or soldiers under his command, to give up to the enemy, or to abandon it, the commissioned officers, non-commissioned officers, or soldiers, who shall be convicted of having so offended, shall suffer death, or such other punishment as shall be inflicted upon them by the sentence of a court-martial.

*Art. 23.* All sutlers and retainers to a camp, and all persons whatsoever serving with the armies of the United States in the field, though no enlisted soldier, are to be subject to orders, according to the rules and discipline of war.

*Art. 24.* Officers having brevets, or commissions of a prior date to those of the regiment in which they now serve, may take place in courts-martial and on detachments, when composed of different corps, according to the ranks given them in their brevets or dates of their former commissions; but in the regiment, troop, or company to which such brevet officers and those who have commissions of a prior date do belong, they shall do duty and take rank both on court-martial and on detachments which shall be composed only of their own corps, according to the commissions by which they are mustered in the said corps.

*Art. 25.* If upon marches, guards, or in quarters, different corps shall happen to join or do duty together, the eldest officer by commission there, on duty, or in quarters, shall command the whole, and give out orders for what is needful to the service; regard being always had to the several ranks of those corps, and the posts they usually occupy.

*Art. 26.* And in like manner also, if any regiments, troops, or detachments of horse or foot shall happen to march with, or be encamped or quartered with any bodies or detachments of other troops in the service of the United States, the eldest officer, without respect to corps, shall take upon him the command of the whole, and give the necessary orders to the service.

#### SECTION XIV.

*Art. 1.* A general court-martial in the United States shall not consist of less than thirteen commissioned officers, and the president of such

court-martial shall not be the commander-in-chief or commandant of the garrison where the offender shall be tried, nor be under the degree of a field officer.

*Art. 2.* The members both of general and regimental courts-martial shall, when belonging to different corps, take the same rank which they hold in the army; but when courts-martial shall be composed of officers of one corps, they shall take their ranks according to the dates of the commissions by which they are mustered in the said corps.

*Art. 3.* The judge-advocate general, or some person deputed by him, shall prosecute in the name of the United States of America; and in trials of offenders by general courts-martial, administer to each member the following oaths:

"You shall well and truly try and determine, according to your evidence, the matter now before you, between the United States of America, and the prisoners to be tried. So help you God.

"You A. B. do swear, that you will duly administer justice according to the rules and articles for the better government of the forces of the United States of America, without partiality, favor, or affection; and if any doubt shall arise, which is not explained by the said articles, according to your conscience, the best of your understanding, and the custom of war in the like cases. And you do further swear, that you will not divulge the sentence of the court, until it shall be approved of by the general, or commander in chief; neither will you, upon any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof as a witness by a court of justice, in a due course of law. So help you God."

And as soon as the said oath shall have been administered to the respective members, the president of the court shall administer to the judge advocate, or person officiating as such, an oath in the following words:

"You A. B. do swear, that you will not, upon any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof, as a witness, by a court of justice, in a due course of law. So help you God."

*Art. 4.* All the members of a court-martial are to behave with calmness and decency; and in the giving of their votes, are to begin with the youngest in commission.

*Art. 5.* All persons who give evidence before a general court-martial, are to be examined upon oath; and no sentence of death shall be given against any offender by any general court-martial, unless two-thirds of the officers present shall concur therein.

*Art. 6.* All persons called to give evidence, in any cause, before a court-martial, who shall refuse to give evidence, shall be punished for such refusal, at the discretion of such court-martial: The oath to be administered in the following form, viz:

"You swear the evidence you shall give in the cause now in hearing, shall be the truth, the whole truth, and nothing but the truth. So help you God."

*Art. 7.* No field officer shall be tried by any person under the degree of a captain; nor shall any proceedings or trials be carried on excepting between the hours of eight in the morning and of three in the afternoon, except in cases which require an immediate example.

*Art. 8.* No sentence of a general court-martial shall be put in execution, till after a report shall be made of the whole proceedings to Congress, or to the general or commander in chief of the forces of the United States, and their or his directions be signified thereupon.

*Art. 9.* For the more equitable decision of disputes which may arise between officers and soldiers belonging to different corps, it is hereby directed, that the courts-martial shall be equally composed of officers belonging to the corps in which the parties in question do then serve; and that the presidents shall be taken by turns, beginning with that corps which shall be eldest in rank.

*Art. 10.* The commissioned officers of every regiment may, by the appointment of their colonel or commanding officer, hold regimental courts-martial for the enquiring into such disputes, or criminal matters, as may come before them, and for the inflicting corporeal punishments for small offences, and shall give judgment by the majority of voices; but no sentence shall be executed till the commanding officer (not being a member of the court-martial) or the commandant of the garrison, shall have confirmed the same.

*Art. 11.* No regimental court-martial shall consist of less than five officers, excepting in cases where that number cannot conveniently be assembled, when three may be sufficient; who are likewise to determine upon the sentence by the majority of voices; which sentence is to be confirmed by the commanding officer of the regiment, not being a member of the court-martial.

*Art. 12.* Every officer commanding in any of the forts, barracks, or elsewhere, where the corps under his command consists of detachments from different regiments, or of independent companies, may assemble courts-martial for the trial of offenders in the same manner as if they were regimental, whose sentence is not to be executed until it shall be confirmed by the said commanding officer.

*Art. 13.* No commissioned officer shall be cashiered or dismissed from the service, excepting by an order from the Congress, or by the sentence of a general court-martial; but non-commissioned officers may be discharged as private soldiers, and, by the order of the colonel of the regiment, or by the sentence of a regimental court-martial, be reduced to private sentinels.

*Art. 14.* No person whatever shall use menacing words, signs, or gestures, in the presence of a court-martial then sitting, or shall cause any disorder or riot, so as to disturb their proceedings, on the penalty of being punished at the discretion of the said court-martial.

*Art. 15.* To the end that offenders may be brought to justice, it is hereby directed, that whenever any officer or soldier shall commit a crime deserving punishment, he shall, by his commanding officer, if an officer, be put in arrest; if a non-commissioned officer or soldier, be imprisoned till he shall be either tried by a court-martial, or shall be lawfully discharged by a proper authority.

*Art. 16.* No officer or soldier who shall be put in arrest or imprisonment, shall continue in his confinement more than eight days, or till such time as a court-martial can be conveniently assembled.

*Art. 17.* No officer commanding a guard, or provost-martial, shall refuse to receive or keep any prisoner committed to his charge, by any officer belonging to the forces of the United States; which officer shall,

at the same time, deliver an account in writing, signed by himself, of the crime with which the said prisoner is charged.

*Art. 18.* No officer commanding a guard, or provost-martial, shall presume to release any prisoner committed to his charge without proper authority for so doing; nor shall he suffer any prisoner to escape, on the penalty of being punished for it by a sentence of a court-martial.

*Art. 19.* Every officer or provost-martial to whose charge prisoners shall be committed, is hereby required within twenty-four hours after such commitment, or as soon as he shall be relieved from his guard, to give in writing to the colonel of the regiment to whom the prisoner belongs (where the prisoner is confined upon the guard belonging to the said regiment, and that his offence only relates to the neglect of duty in his own corps) or to the commander in chief, their names, their crimes, and the names of the officers who committed them, on the penalty of his being punished for his disobedience or neglect, at the discretion of a court-martial.

*Art. 20.* And if any officer under arrest, shall leave his confinement before he is set at liberty by the officer who confined him, or by a superior power, he shall be cashiered for it.

*Art. 21.* Whatsoever commissioned officer shall be convicted, before a general court-martial, of behaving in a scandalous, infamous manner, such as is unbecoming the character of an officer and a gentleman, shall be discharged from the service.

*Art. 22.* In all cases where a commissioned officer is cashiered for cowardice, or fraud, it shall be added in the punishment, that the crime, name, place of abode, and punishment of the delinquent, be published in the newspapers, in and about the camp, and of that particular state from which the offender came, or usually resides: After which, it shall be deemed scandalous for any officer to associate with him.

#### SECTION XV.

*Art. 1.* When any commissioned officer shall happen to die, or be killed in the service of the United States, the major of the regiment, or the officer doing the major's duty in his absence, shall immediately secure all his effects, or equipage, then in camp or quarters; and shall, before the next regimental court-martial, make an inventory thereof, and forthwith transmit the same to the office of the board of war, to the end, that his executors may, after payment of his debts in quarters and interment, receive the overplus, if any be, to his or their use.

*Art. 2.* When any non-commissioned officer or soldier shall happen to die, or to be killed in the service of the United States, the then commanding officer of the troop or company, shall, in the presence of two other commissioned officers, take an account of whatever effects he dies possessed of, above his regimental clothing, arms, and accoutrements, and transmit the same to the office of the board of war; which said effects are to be accounted for and paid to the representative of such deceased non-commissioned officer or soldier. And in case any of the officers, so authorized to take care of the effects of dead officers and soldiers, should, before they shall have accounted to their representatives for the same, have occasion to leave the regiment, by preferment or otherwise, they shall, before they be permitted to quit the same, deposit in the hands of the commanding officer or of the agent of the regiment, all the effects of such deceased non-commissioned officers and

soldiers, in order that the same may be secured for, and paid to, their respective representatives.

#### SECTION XVI.

*Art. 1.* All officers, conductors, gunners, matrosses, drivers, or any other persons whatsoever, receiving pay or hire in the service of the artillery of the United States, shall be governed by the aforesaid rules and articles, and shall be subject to be tried by courts-martial, in like manner with the officers and soldiers of the other troops in the service of the United States.

*Art. 2.* For differences arising amongst themselves, or in matters relating solely to their own corps, the courts-martial may be composed of their own officers; but where a number sufficient of such officers cannot be assembled, or in matters wherein other corps are interested, the officers of artillery shall sit in courts-martial with the officers of the other corps, taking their rank according to the dates of their respective commissions, and no otherwise.

#### SECTION XVII.

*Art. 1.* The officers and soldiers of any troops, whether minute-men, militia, or others, being mustered and in continental pay, shall, at all times, and in all places, when joined, or acting in conjunction with the regular forces of the United States, be governed by these rules or articles of war, and shall be subject to be tried by courts-martial in like manner with the officers and soldiers in the regular forces, save only that such courts-martial shall be composed entirely of militia officers of the same provincial corps with the offender.

That such militia and minute-men as are now in service, and have, by particular contract with the respective States, engaged to be governed by particular regulations while in continental service, shall not be subject to the above articles of war.

*Art. 2.* For the future, all general officers and colonels, serving by commission from the authority of any particular State, shall, on all detachments, courts-martial, or other duty wherein they may be employed in conjunction with the regular forces of the United States, take rank next after all generals and colonels serving by commissions from Congress, though the commissions of such particular generals and colonels should be of elder date; and in like manner lieutenant-colonels, majors, captains, and other inferior officers, serving by commission from any particular State, shall, on all detachments, courts-martial or other duty, wherein they may be employed in conjunction with the regular forces of the United States, have rank next after all officers of the like rank serving by commissions from Congress, though the commissions of such lieutenant-colonels, majors, captains, and other inferior officers should be of elder date to those of the like rank from Congress.

#### SECTION XVIII.

*Art. 1.* The foregoing articles are to be read and published once in every two months, at the head of every regiment, troop or company, mustered, or to be mustered in the service of the United States; and are to be duly observed and exactly obeyed by all officers and soldiers who are or shall be in the said service.

*Art. 2.* The general, or commander in chief for the time being, shall

have full power of pardoning or mitigating any of the punishments ordered to be inflicted, for any of the offences mentioned in the foregoing articles; and every offender convicted as aforesaid, by any regimental court-martial, may be pardoned, or have his punishment mitigated by the colonel, or officer commanding the regiment.

*Art. 3.* No person shall be sentenced to suffer death, except in the cases expressly mentioned in the foregoing articles; nor shall more than one hundred lashes be inflicted on any offender, at the discretion of a court-martial.

That every judge-advocate, or person officiating as such, at any general court-martial, do, and he is hereby required to transmit, with as much expedition as the opportunity of time and distance of place can admit, the original proceedings and sentence of such court-martial to the secretary at war, which said original proceedings and sentence shall be carefully kept and preserved in the office of said secretary, to the end that persons entitled thereto may be enabled, upon application to the said office, to obtain copies thereof.

That the party tried by any general court-martial, shall be entitled to a copy of the sentence and proceedings of such court-martial, upon demand thereof made by himself, or by any other person or persons, on his behalf, whether such sentence be approved or not.

*Art. 4.* The field officers of each and every regiment are to appoint some suitable person belonging to such regiment, to receive all such fines as may arise within the same, for any breach of any of the foregoing articles, and shall direct the same to be carefully and properly applied to the relief of such sick, wounded or necessitous soldiers as belong to such regiments; and such person shall account with such officer for all fines received and the application thereof.

*Art. 5.* All crimes not capital, and all disorders and neglects which officers and soldiers may be guilty of, to the prejudice of good order and military discipline, though not mentioned in the above articles of war, are to be taken cognizance of by a general or regimental court-martial, according to the nature and degree of the offence, and be punished at their discretion.

## XI.

## AMERICAN ARTICLES, ENACTED MAY 31, 1786.

*Whereas* crimes may be committed by officers and soldiers serving with small detachments of the forces of the United States, and where there may not be a sufficient number of officers to hold a general court-martial, according to the rules and articles of war, in consequence of which criminals may escape punishment, to the great injury of the discipline of the troops and the public service;

*Resolved*, That the 14th Section of the Rules and Articles for the better government of the troops of the United States, and such other Articles as relate to the holding of courts-martial and the confirmation of the sentences thereof, be and they are hereby repealed;

*Resolved*, That the following Rules and Articles for the administration of justice, and the holding of courts-martial, and the confirmation of the sentences thereof, be duly observed and exactly obeyed by all officers and soldiers who are or shall be in the armies of the United States.

## ADMINISTRATION OF JUSTICE.

ART. 1. General courts-martial may consist of any number of commissioned officers from 5 to 13 inclusively; but they shall not consist of less than 13, where that number can be convened without manifest injury to the service.

ART. 2. General courts-martial shall be ordered, as often as the cases may require, by the general or officer commanding the troops. But no sentence of a court-martial shall be carried into execution until after the whole proceedings shall have been laid before the said general or officer commanding the troops for the time being; neither shall any sentence of a general court-martial in time of peace, extending to the loss of life, the dismissal of a commissioned officer, or which shall either in time of peace or war respect a general officer, be carried into execution, until after the whole proceedings shall have been transmitted to the secretary at war, to be laid before Congress for their confirmation, or disapproval, and their orders on the case. All other sentences may be confirmed and executed by the officer ordering the court to assemble, or the commanding officer for the time being, as the case may be.

ART. 3. Every officer commanding a regiment or corps, may appoint of his own regiment or corps, courts-martial, to consist of 3 commissioned officers, for the trial of offences not capital, and the inflicting corporeal punishments, and decide upon their sentences. For the same purpose, all officers commanding any of the garrisons, forts, barracks, or other place, where the troops consist of different corps, may assemble courts-martial, to consist of 3 commissioned officers, and decide upon their sentences.

ART. 4. No garrison or regimental court-martial shall have the power to try capital cases, or commissioned officers; neither shall they inflict.

a fine exceeding one month's pay, nor imprison, nor put to hard labor, any non-commissioned officer or soldier, for a longer time than one month.

ART. 5. The members of all courts-martial shall, when belonging to different corps, take the same rank in court which they hold in the army. But when courts-martial shall be composed of officers of one corps, they shall take rank according to the commissions by which they are mustered in the said corps.

ART. 6. The judge advocate, or some person deputed by him, or by the general or officer commanding the army, detachment or garrison, shall prosecute in the name of the United States of America ; but shall so far consider himself as counsel for the prisoner, after the said prisoner shall have made his plea, as to object to any leading question, to any of the witnesses, or any question to the prisoner, the answer to which might tend to criminate himself ; and administer to each member the following oaths, which shall also be taken by all members of regimental and garrison courts-martial :

" You shall well and truly try and determine, according to evidence, the matter now before you, between the United States of America, and the prisoner to be tried. So help you God."

" You A. B. do swear, that you will duly administer justice, according to the rules and articles for the better government of the forces of the United States of America, without partiality, favor or affection ; and if any doubt shall arise, which is not explained by said articles, according to your conscience, the best of your understanding, and the custom of war in the like cases. And you do further swear, that you will not divulge the sentence of the court, until it shall be published by the commanding officer. Neither will you, upon any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof, as a witness, by a court of justice, in a due course of law. So help you God."

And as soon as the said oaths shall have been administered to the respective members, the president of the court shall administer to the judge advocate, or person officiating as such, an oath in the following words:

" You A. B. do swear, that you will not, upon any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof as a witness, by a court of justice, in a due course of law. So help you God."

ART. 7. All the members of a court-martial are to behave with decency and calmness; and in giving their votes, are to begin with the youngest in commission.

ART. 8. All persons who give evidence before a court-martial, are to be examined on oath, or affirmation, as the case may be, and no sentence of death shall be given against any offender by any general court-martial, unless two-thirds of the members of the court shall concur therein.

ART. 9. Whenever an oath or affirmation shall be administered by a court-martial, the oath or affirmation shall be in the following form:

" You swear (or affirm, as the case may be) the evidence you shall give in the case now in hearing, shall be the truth, the whole truth, and nothing but the truth. So help you God."

ART. 10. On the trials of cases not capital, before courts-martial, the



depositions of witnesses, not in the line or staff of the army, may be taken before some justice of the peace, and read in evidence, provided the prosecutor and person accused are present at the taking the same.

ART. 11. No officer shall be tried but by a general court-martial, nor by officers of an inferior rank if it can be avoided. Nor shall any proceedings or trials be carried on, excepting between the hours of 8 in the morning and 3 in the afternoon, except in cases which, in the opinion of the officer appointing the court, require immediate example.

ART. 12. No person whatsoever shall use menacing words, signs or gestures in the presence of a court-martial, or shall cause any disorder or riot to disturb their proceedings, on the penalty of being punished at the discretion of the said court-martial.

ART. 13. No commissioned officer shall be cashiered, or dismissed from the service, excepting by order of Congress, or by the sentence of a general court-martial; and no non-commissioned officer or soldier shall be discharged the service, but by the order of Congress, the secretary at war, the commander-in-chief, or commanding officer of a department, or by the sentence of a general court-martial.

ART. 14. Whenever any officer shall be charged with a crime, he shall be arrested and confined to his barracks, quarters or tent, and deprived of his sword by his commanding officer. And any officer who shall leave his confinement before he shall be set at liberty by his commanding officer, or by a superior power, shall be cashiered for it.

ART. 15. Non-commissioned officers and soldiers, who shall be charged with crimes, shall be imprisoned until they shall be tried by a court-martial, or released by proper authority.

ART. 16. No officer or soldier, who shall be put in arrest or imprisonment, shall continue in his confinement more than 8 days, or until such time as a court-martial can be assembled.

ART. 17. No officer commanding a guard, or provost-marshal, shall refuse to receive or keep any prisoner committed to his charge by any officer belonging to the forces of the United States, provided the officer committing shall, at the same time, deliver an account in writing signed by himself, of the crime with which the said prisoner is charged.

ART. 18. No officer commanding a guard, or provost-marshal, shall presume to release any person committed to his charge, without proper authority for so doing; nor shall he suffer any person to escape on penalty of being punished for it by the sentence of a court-martial.

ART. 19. Every officer, or provost-marshal, to whose charge prisoners shall be committed, shall, within 24 hours after such commitment, or as soon as he shall be relieved from his guard, make report in writing, to the commander-in-chief, or commanding officer, of their names, their crimes and the names of the officers who committed them, on the penalty of his being punished for disobedience or neglect at the discretion of a court-martial.

ART. 20. Whatever commissioned officer shall be convicted before a general court-martial, of behaving in a scandalous and infamous manner, such as is unbecoming an officer and a gentleman, shall be dismissed the service.

ART. 21. In cases where a court-martial may think it proper to sentence a commissioned officer to be suspended from command, they shall have power also to suspend his pay and emoluments for the same time, according to the nature and heinousness of the offence.

ART. 22. In all cases where a commissioned officer is cashiered for cowardice or fraud, it shall be added in the sentence, that the crime, name, place of abode, and punishment of the delinquent be published in the newspapers, in and about camp, and of the particular State from which the offender came, or usually resides; after which it shall be deemed scandalous for any officer to associate with him.

ART. 23. The commanding officer of any post or detachment, in which there shall not be a number of officers adequate to form a general court-martial, shall, in cases which require the cognizance of such a court, report to the commanding officer of the department, who shall order a court to be assembled at the nearest post or detachment, and the party accused, with the necessary witnesses, to be transported to the place where the said court shall be assembled.

ART. 24. No person shall be sentenced to suffer death, except in the cases expressly mentioned in the foregoing articles; nor shall more than 100 lashes be inflicted on any offender at the discretion of a court-martial.

Every judge advocate, or person officiating as such, at any general court-martial, shall transmit, with as much expedition as the opportunity of time and distance of place can admit, the original proceedings and sentence of such court-martial, to the secretary at war, which said original proceedings and sentence, shall be carefully kept and preserved, in the office of the said secretary, to the end, that persons entitled thereto may be enabled, upon application to the said office, to obtain copies thereof.

The party tried by any general court-martial, shall be entitled to a copy of the sentence and proceedings of such court-martial after a decision on the sentence, upon demand thereof made by himself, or by any person or persons in his behalf, whether such sentence be approved or not.

ART. 25. In such cases where the general or commanding officer may think proper to order a court of inquiry, to examine into the nature of any transaction, accusation or imputation against any officer or soldier, the said court shall be conducted conformably to the following regulations: It may consist of one or more officers, not exceeding 3, with the judge advocate or a suitable person as a recorder, to reduce the proceedings and evidences to writing, all of whom shall be sworn to the faithful performance of their duty. This court shall have the same power to summon witnesses as a court-martial, and to examine them on oath. But they shall not give their opinion on the merits of the case, excepting they shall be thereto specially required. The parties accused shall also be permitted to cross-examine and interrogate the witnesses, so as to investigate fully the circumstances in question.

ART. 26. The proceedings of a court of inquiry must be authenticated by the signature of the recorder and the president, and delivered to the commanding officer; and the said proceedings may be admitted as evidence, by a court-martial, in cases not capital or extending to the dismissal of an officer; provided, that the circumstances are such that oral testimony cannot be obtained. But, as courts of inquiry may be perverted to dishonorable purposes, and may be considered as engines of destruction to military merit, in the hands of weak and envious commandants, they are hereby prohibited, unless demanded by the accused.

ART. 27. The judge advocate, or the recorder, shall administer to the members the following oath :

" You shall well and truly examine and inquire, according to your evidence, into the matter now before you, without favor or affection. So help you God."

After which the president shall administer to the judge advocate, or recorder, the following oath :

" You A. B. do swear, that you will, according to your best abilities, accurately and impartially record the proceedings of the court, and the evidences to be given in the case in hearing. So help you God."

The witnesses shall take the same oath as is directed to be administered to witnesses sworn before a court-martial.

*Resolved*, That when any desertion shall happen from the troops of the United States, the officer commanding the regiment or corps to which the deserters belonged, shall be responsible, that an immediate report of the same be made to the commanding officer of the forces of the United States present.

*Resolved*, That the commanding officer of any of the forces in the service of the United States, shall, upon report made to him of any desertions in the troops under his orders, cause the most immediate and vigorous search to be made after the deserter or deserters, which may be conducted by a commissioned or non-commissioned officer, as the case shall require. That, if such search should prove ineffectual, the officer commanding the regiment or corps to which the deserter or deserters belonged, shall insert, in the nearest gazette or newspaper, an advertisement, descriptive of the deserter or deserters, and offering a reward, not exceeding ten dollars, for each deserter, who shall be apprehended and secured in any of the gaols in the neighboring states. That the charges of advertising deserters, the reasonable extra expenses incurred by the person conducting the pursuit, and the reward, shall be paid by the secretary at war, on the certificate of the commanding officer of the troops.

## XII.

## AMERICAN ARTICLES OF WAR OF 1806.

(ENACTED APRIL 10, 1806.)

SECTION 1. *Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled,* That, from and after the passing of this act, the following shall be the rules and articles by which the armies of the United States shall be governed:

ARTICLE 1. Every officer now in the army of the United States shall, in six months from the passing of this act, and every officer who shall hereafter be appointed shall, before he enters on the duties of his office, subscribe these rules and regulations.

ART. 2. It is earnestly recommended to all officers and soldiers diligently to attend divine service; and all officers who shall behave indecently or irreverently at any place of divine worship shall, if commissioned, officers, be brought before a general court-martial, there to be publicly and severely reprimanded by the president; if non-commissioned officers or soldiers, every person so offending shall, for his first offence, forfeit one-sixth of a dollar, to be deducted out of his next pay; for the second offence, he shall not only forfeit a like sum, but be confined twenty-four hours; and for every like offence, shall suffer and pay in like manner; which money, so forfeited, shall be applied, by the captain or senior officer of the troop or company, to the use of the sick soldiers of the company or troop to which the offender belongs.

ART. 3. Any non-commissioned officer or soldier who shall use any profane oath or execration, shall incur the penalties expressed in the foregoing article; and a commissioned officer shall forfeit and pay, for each and every such offence, one dollar, to be applied as in the preceding article.

ART. 4. Every chaplain commissioned in the army or armies of the United States, who shall absent himself from the duties assigned him (excepting in cases of sickness or leave of absence), shall, on conviction thereof before a court-martial, be fined not exceeding one month's pay, besides the loss of his pay during his absence; or be discharged, as the said court-martial shall judge proper.

ART. 5. Any officer or soldier who shall use contemptuous or disrespectful words against the President of the United States, against the Vice-President thereof, against the Congress of the United States, or against the Chief Magistrate or Legislature of any of the United States, in which he may be quartered, if a commissioned officer, shall be cashiered, or otherwise punished, as a court-martial shall direct; if a non-commissioned officer or soldier, he shall suffer such punishment as shall be inflicted on him by the sentence of a court-martial.

ART. 6. Any officer or soldier who shall behave himself with contempt or disrespect toward his commanding officer, shall be punished, according to the nature of his offense, by the judgment of a court-martial.

ART. 7. Any officer or soldier who shall begin, excite, cause, or join in, any mutiny or sedition, in any troop or company in the service of the United States, or in any party, post, detachment, or guard, shall suffer death, or such other punishment as by a court-martial shall be inflicted.

ART. 8. Any officer, non-commissioned officer, or soldier, who, being present at any mutiny or sedition, does not use his utmost endeavor to suppress the same, or, coming to the knowledge of any intended mutiny, does not, without delay, give information thereof to his commanding officer, shall be punished by the sentence of a court-martial with death, or otherwise, according to the nature of his offense.

ART. 9. Any officer or soldier who shall strike his superior officer, or draw or lift up any weapon, or offer any violence against him, being in the execution of his office, on any pretense whatsoever, or shall disobey any lawful command of his superior officer, shall suffer death, or such other punishment as shall, according to the nature of his offense, be inflicted upon him by the sentence of a court-martial.

ART. 10. Every non-commissioned officer or soldier, who shall enlist himself in the service of the United States, shall, at the time of his so enlisting, or within six days afterward, have the Articles for the government of the armies of the United States read to him, and shall, by the officer who enlisted him, or by the commanding officer of the troop or company into which he was enlisted, be taken before the next justice of the peace, or chief magistrate of any city or town corporate, not being an officer of the army,\* or where recourse cannot be had to the civil magistrate, before the judge advocate, and in his presence shall take the following oath or affirmation: "I, A. B., do solemnly swear, or affirm (as the case may be), that I will bear true allegiance to the United States of America, and that I will serve them honestly and faithfully against all their enemies or opposers whatsoever; and observe and obey the orders of the President of the United States, and the orders of the officers appointed over me, according to the Rules and Articles for the government of the armies of the United States." Which justice, magistrate, or judge advocate is to give to the officer a certificate, signifying that the man enlisted did take the said oath or affirmation.

ART. 11. After a non-commissioned officer or soldier shall have been duly enlisted and sworn, he shall not be dismissed the service without a discharge in writing; and no discharge granted to him shall be sufficient which is not signed by a field officer of the regiment to which he belongs, or commanding officer, where no field officer of the regiment is present; and no discharge shall be given to a non-commissioned officer or soldier before his term of service has expired, but by order of the President, the Secretary of War, the commanding officer of a department, or the sentence of a general court-martial; nor shall a commissioned officer be discharged the service but by order of the President of the United States, or by sentence of a general court-martial.

ART. 12. Every colonel, or other officer commanding a regiment, troop, or company, and actually quartered with it, may give furloughs to non-commissioned officers or soldiers, in such numbers, and for so long a time, as he shall judge to be most consistent with the good of the service; and a captain, or other inferior officer, commanding a troop or

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\* By Sec. 11, Ch. 42, Act of August 3, 1861, the oath of enlistment and reenlistment may be administered by any commissioned officer of the army.

company, or in any garrison, fort, or barrack of the United States (his field officer being absent), may give furloughs to non-commissioned officers or soldiers, for a time not exceeding twenty days in six months, but not to more than two persons to be absent at the same time, excepting some extraordinary occasion should require it.

ART. 13. At every muster, the commanding officer of each regiment, troop, or company, there present, shall give to the commissary of musters, or other officer who musters the said regiment, troop, or company, certificates signed by himself, signifying how long such officers, as shall not appear at the said muster, have been absent, and the reason of their absence. In like manner, the commanding officer of every troop or company shall give certificates, signifying the reasons of the absence of the non-commissioned officers and private soldiers; which reasons and time of absence shall be inserted in the muster-rolls, opposite the names of the respective absent officers and soldiers. The certificates shall, together with the muster-rolls, be remitted by the commissary of musters, or other officer mustering, to the Department of War, as speedily as the distance of the place will admit.

ART. 14. Every officer who shall be convicted before a general court-martial of having signed a false certificate relating to the absence of either officer or private soldier, or relative to his or their pay, shall be cashiered.

ART. 15. Every officer who shall knowingly make a false muster of man or horse, and every officer or commissary of musters who shall willingly sign, direct, or allow the signing of muster-rolls wherein such false muster is contained, shall, upon proof made thereof, by two witnesses, before a general court-martial, be cashiered, and shall be thereby utterly disabled to have or hold any office or employment in the service of the United States.

ART. 16. Any commissary of musters, or other officer, who shall be convicted of having taken money, or other thing, by way of gratification, on mustering any regiment, troop, or company, or on signing muster-rolls, shall be displaced from his office, and shall be thereby utterly disabled to have or hold any office or employment in the service of the United States.

ART. 17. Any officer who shall presume to muster a person as a soldier who is not a soldier, shall be deemed guilty of having made a false muster, and shall suffer accordingly.

ART. 18. Every officer who shall knowingly make a false return to the Department of War, or to any of his superior officers, authorized to call for such returns, of the state of the regiment, troop, or company, or garrison, under his command; or of the arms, ammunition, clothing, or other stores thereunto belonging, shall, on conviction thereof before a court-martial, be cashiered.

ART. 19. The commanding officer of every regiment, troop, or independent company, or garrison, of the United States, shall, in the beginning of every month, remit, through the proper channels, to the Department of War, an exact return of the regiment, troop, independent company, or garrison, under his command, specifying the names of the officers then absent from their posts, with the reasons for and the time of their absence. And any officer who shall be convicted of having, through neglect or design, omitted sending such returns, shall be pun-

ished, according to the nature of his crime, by the judgment of a general court-martial.

ART. 20. All officers and soldiers who have received pay, or have been duly enlisted in the service of the United States, and shall be convicted of having deserted the same, shall suffer death, or such other punishment as, by sentence of a court-martial, shall be inflicted.

ART. 21. Any non-commissioned officer or soldier who shall, without leave from his commanding officer, absent himself from his troop, company, or detachment, shall, upon being convicted thereof, be punished according to the nature of his offence, at the discretion of a court-martial.

ART. 22. No non-commissioned officer or soldier shall enlist himself in any other regiment, troop, or company, without a regular discharge from the regiment, troop, or company in which he last served, on the penalty of being reputed a deserter, and suffering accordingly. And in case any officer shall knowingly receive and entertain such non-commissioned officer or soldier, or shall not, after his being discovered to be a deserter, immediately confine him, and give notice thereof to the corps in which he last served, the said officer shall, by a court-martial, be cashiered.

ART. 23. Any officer or soldier who shall be convicted of having advised or persuaded any other officer or soldier to desert the service of the United States, shall suffer death, or such other punishment as shall be inflicted upon him by the sentence of a court-martial.

ART. 24. No officer or soldier shall use any reproachful or provoking speeches or gestures to another, upon pain, if an officer, of being put in arrest; if a soldier, confined, and of asking pardon of the party offended, in the presence of his commanding officer.

ART. 25. No officer or soldier shall send a challenge to another officer or soldier, to fight a duel, or accept a challenge if sent, upon pain, if a commissioned officer, of being cashiered; if a non-commissioned officer or soldier, of suffering corporeal punishment, at the discretion of a court-martial.

ART. 26. If any commissioned or non-commissioned officer commanding a guard shall knowingly or willingly suffer any person whatsoever to go forth to fight a duel, he shall be punished as a challenger; and all seconds, promoters, and carriers of challenges, in order to duels, shall be deemed principals, and be punished accordingly. And it shall be the duty of every officer commanding an army, regiment, company, post, or detachment, who is knowing to a challenge being given or accepted by any officer, non-commissioned officer, or soldier, under his command, or has reason to believe the same to be the case, immediately to arrest and bring to trial such offenders.

ART. 27. All officers, of what condition soever, have power to part and quell all quarrels, frays, and disorders, though the persons concerned should belong to another regiment, troop, or company; and either to order officers into arrest, or non-commissioned officers or soldiers into confinement, until their proper superior officer shall be acquainted therewith; and whosoever shall refuse to obey such officer (though of an inferior rank), or shall draw his sword upon him, shall be punished at the discretion of a general court-martial.

ART. 28. Any officer or soldier who shall upbraid another for refusing a challenge, shall himself be punished as a challenger; and all officers

and soldiers are hereby discharged from any disgrace or opinion of disadvantage which might arise from their having refused to accept of challenges, as they will only have acted in obedience to the laws, and done their duty as good soldiers who subject themselves to discipline.

ART. 29. No sutler shall be permitted to sell any kind of liquors or victuals, or to keep their houses or shops open for the entertainment of soldiers, after nine at night, or before the beating of the reveille, or upon Sundays, during divine service or sermon, on the penalty of being dismissed from all future sutling.

ART. 30. All officers commanding in the field, forts, barracks, or garrisons of the United States, are hereby required to see that the persons permitted to suttle shall supply the soldiers with good and wholesome provisions, or other articles, at a reasonable price, as they shall be answerable for their neglect.

ART. 31. No officer commanding in any of the garrisons, forts, or barracks of the United States, shall exact exorbitant prices for houses or stalls, let out to sutlers, or connive at the like exactions in others; nor by his own authority, and for his private advantage, lay any duty or imposition upon, or be interested in, the sale of any victuals, liquors, or other necessities of life brought into the garrison, fort or barracks, for the use of the soldiers, on the penalty of being discharged from the service.

ART. 32. Every officer commanding in quarters, garrisons, or on the march, shall keep good order, and, to the utmost of his power, redress all abuses or disorders which may be committed by any officer or soldier under his command; if, upon complaint made to him of officers or soldiers beating or otherwise ill-treating any person, or disturbing fairs or markets, or of committing any kind of riots, to the disquieting of the citizens of the United States, he, the said commander, who shall refuse or omit to see justice done to the offender or offenders, and reparation made to the party or parties injured, as far as part of the offender's pay shall enable him or them, shall, upon proof thereof, be cashiered, or otherwise punished, as a general court-martial shall direct.

ART. 33. When any commissioned officer or soldier shall be accused of a capital crime, or of having used violence, or committed any offense against the person or property of any citizen of any of the United States, such as is punishable by the known laws of the land, the commanding officer and officers of every regiment, troop, or company to which the person or persons so accused shall belong, are hereby required, upon application duly made by, or in behalf of, the party or parties injured, to use their utmost endeavors to deliver over such accused person or persons to the civil magistrate, and likewise to be aiding and assisting to the officers of justice in apprehending and securing the person or persons so accused, in order to bring him or them to trial. If any commanding officer or officers shall wilfully neglect, or shall refuse upon the application aforesaid, to deliver over such accused person or persons to the civil magistrates, or to be aiding and assisting to the officers of justice in apprehending such person or persons, the officer or officers so offending shall be cashiered.

ART. 34. If any officer shall think himself wronged by his Colonel, or the commanding officer of the regiment, and shall, upon due application being made to him, be refused redress, he may complain to the General commanding in the State or Territory where such regiment shall be



stationed, in order to obtain justice; who is hereby required to examine into said complaint, and take proper measures for redressing the wrong complained of, and transmit, as soon as possible, to the Department of War, a true state of such complaint, with the proceedings had thereon.

ART. 35. If any inferior officer or soldier shall think himself wronged by his Captain or other officer, he is to complain thereof to the commanding officer of the regiment, who is hereby required to summon a regimental court-martial, for the doing justice to the complainant; from which regimental court-martial either party may, if he thinks himself still aggrieved, appeal to a general court-martial. But if, upon a second hearing, the appeal shall appear vexatious and groundless, the person so appealing shall be punished at the discretion of the said court-martial.

ART. 36. Any commissioned officer, store-keeper, or commissary, who shall be convicted at a general court-martial of having sold, without a proper order for that purpose, embezzled, misapplied, or wilfully, or through neglect, suffered any of the provisions, forage, arms, clothing, ammunition, or other military stores belonging to the United States to be spoiled or damaged, shall, at his own expense, make good the loss or damage, and shall, moreover, forfeit all his pay, and be dismissed from the service.

ART. 37. Any non-commissioned officer or soldier who shall be convicted at a regimental court-martial of having sold, or designedly, or through neglect, wasted the ammunition delivered out to him, to be employed in the service of the United States, shall be punished at the discretion of such court.

ART. 38. Every non-commissioned officer or soldier who shall be convicted before a court-martial of having sold, lost, or spoiled, through neglect, his horse, arms, clothes, or accoutrements, shall undergo such weekly stoppages (not exceeding the half of his pay) as such court-martial shall judge sufficient, for repairing the loss or damage; and shall suffer confinement, or such other corporeal punishment as his crime shall deserve.

ART. 39. Every officer who shall be convicted before a court-martial of having embezzled or misapplied any money with which he may have been intrusted, for the payment of the men under his command, or for enlisting men into the service, or for other purposes, if a commissioned officer, shall be cashiered, and compelled to refund the money; if a non-commissioned officer, shall be reduced to the ranks, be put under stoppages until the money be made good, and suffer such corporeal punishment as such court-martial shall direct.

ART. 40. Every captain of a troop or company is charged with the arms, accoutrements, ammunition, clothing, or other warlike stores belonging to the troop or company under his command, which he is to be accountable for to his Colonel in case of their being lost, spoiled, or damaged, not by unavoidable accidents, or on actual service.

ART. 41. All non-commissioned officers and soldiers who shall be found one mile from the camp without leave, in writing, from their commanding officer, shall suffer such punishment as shall be inflicted upon them by the sentence of a court-martial.

ART. 42. No officer or soldier shall lie out of his quarters, garrison, or camp without leave from his superior officer, upon penalty of being

punished according to the nature of his offense, by the sentence of a court-martial.

ART. 43. Every non-commissioned officer and soldier shall retire to his quarters or tent at the beating of the retreat; in default of which he shall be punished according to the nature of his offense.

ART. 44. No officer, non-commissioned officer, or soldier shall fail in repairing, at the time fixed, to the place of parade, of exercise, or other rendezvous appointed by his commanding officer, if not prevented by sickness or some other evident necessity, or shall go from the said place of rendezvous without leave from his commanding officer, before he shall be regularly dismissed or relieved, on the penalty of being punished, according to the nature of his offense, by the sentence of a court-martial.

ART. 45. Any commissioned officer who shall be found drunk on his guard, party, or other duty, shall be cashiered. Any non-commissioned officer or soldier so offending shall suffer such corporeal punishment as shall be inflicted by the sentence of a court-martial.

ART. 46. Any sentinel who shall be found sleeping upon his post, or shall leave it before he shall be regularly relieved, shall suffer death, or such other punishment as shall be inflicted by the sentence of a court-martial.

ART. 47. No soldier belonging to any regiment, troop, or company shall hire another to do his duty for him, or be excused from duty but in cases of sickness, disability, or leave of absence; and every such soldier found guilty of hiring his duty, as also the party so hired to do another's duty, shall be punished at the discretion of a regimental court-martial.

ART. 48. And every non-commissioned officer conniving at such hiring of duty aforesaid, shall be reduced; and every commissioned officer knowing and allowing such ill-practices in the service, shall be punished by the judgment of a general court-martial.

ART. 49. Any officer belonging to the service of the United States, who, by discharging of fire-arms, drawing of swords, beating of drums, or by any other means whatsoever, shall occasion false alarms in camp, garrison, or quarters, shall suffer death, or such other punishment as shall be ordered by the sentence of a general court-martial.

ART. 50. Any officer or soldier who shall, without urgent necessity, or without the leave of his superior officer, quit his guard, platoon, or division, shall be punished, according to the nature of his offense, by the sentence of a court-martial.

ART. 51. No officer or soldier shall do violence to any person who brings provisions or other necessities to the camp, garrison, or quarters of the forces of the United States, employed in any parts out of the said States, upon pain of death, or such other punishment as a court-martial shall direct.

ART. 52. Any officer or soldier who shall misbehave himself before the enemy, run away, or shamefully abandon any fort, post, or guard which he or they may be commanded to defend, or speak words inducing others to do the like, or shall cast away his arms and ammunition, or who shall quit his post or colors to plunder and pillage, every such offender, being duly convicted thereof, shall suffer death, or such other punishment as shall be ordered by the sentence of a general court-martial.

ART. 53. Any person belonging to the armies of the United States who shall make known the watchword to any person who is not entitled

to receive it according to the rules and discipline of war, or shall presume to give a parole or watchword different from what he received, shall suffer death, or such other punishment as shall be ordered by the sentence of a general court-martial.

ART. 54. All officers and soldiers are to behave themselves orderly in quarters and on their march; and whoever shall commit any waste or spoil, either in walks of trees, parks, warrens, fish-ponds, houses, or gardens, corn-fields, inclosures of meadows, or shall maliciously destroy any property whatsoever belonging to the inhabitants of the United States, unless by order of the then commander-in-chief of the armies of the said States, shall (besides such penalties as they are liable to by law) be punished according to the nature and degree of the offense, by the judgment of a regimental or general court-martial.

ART. 55. Whosoever, belonging to the armies of the United States in foreign parts, shall force a safeguard, shall suffer death.

ART. 56. Whosoever shall relieve the enemy with money, victuals, or ammunition, or shall knowingly harbor or protect an enemy, shall suffer death, or such other punishment as shall be ordered by the sentence of a court-martial.

ART. 57. Whosoever shall be convicted of holding correspondence with, or giving intelligence to, the enemy, either directly or indirectly, shall suffer death, or such other punishment as shall be ordered by the sentence of a court-martial.

ART. 58. All public stores taken in the enemy's camp, towns, forts, or magazines, whether of artillery, ammunition, clothing, forage or provisions, shall be secured for the service of the United States; for the neglect of which the commanding officer is to be answerable.

ART. 59. If any commander of any garrison, fortress, or post shall be compelled, by the officers and soldiers under his command, to give up to the enemy, or to abandon it, the commissioned officers, non-commissioned officers, or soldiers who shall be convicted of having so offended, shall suffer death, or such other punishment as shall be inflicted upon them by the sentence of a court-martial.

ART. 60. All sutlers and retainers to the camp, and all persons whatsoever, serving with the armies of the United States in the field, though not enlisted soldiers, are to be subject to orders, according to the rules and discipline of war.

ART. 61. Officers having brevets or commissions of a prior date to those of the regiment in which they serve, may take place in courts-martial and on detachments, when composed of different corps, according to the ranks given them in their brevets or dates of their former commissions; but in the regiment, troop, or company to which such officers belong, they shall do duty and take rank both in courts-martial and on detachments which shall be composed of their own corps, according to the commissions by which they are mustered in the said corps.

ART. 62. If, upon marches, guards, or in quarters, different corps of the army shall happen to join, or do duty together, the officer highest in rank of the line of the army, marine corps, or militia, by commission, there on duty or in quarters, shall command the whole, and give orders for what is needful to the service, unless otherwise specially directed by the President of the United States, according to the nature of the case.

ART. 63. The functions of the engineers being generally confined to

the most elevated branch of military science, they are not to assume, nor are they subject to be ordered on any duty beyond the line of their immediate profession, except by the special order of the President of the United States; but they are to receive every mark of respect to which their rank in the army may entitle them respectively, and are liable to be transferred, at the discretion of the President, from one corps to another, regard being paid to rank.

ART. 64. General courts-martial may consist of any number of commissioned officers, from five to thirteen, inclusively; but they shall not consist of less than thirteen where that number can be convened without manifest injury to the service.

ART. 65. Any general officer commanding an army, or Colonel commanding a separate department, may appoint general courts-martial whenever necessary. But no sentence of a court-martial shall be carried into execution until after the whole proceedings shall have been laid before the officer ordering the same, or the officer commanding the troops for the time being; neither shall any sentence of a general court-martial, in the time of peace, extending to the loss of life, or the dismissal of a commissioned officer, or which shall, either in time of peace or war, respect a general officer, be carried into execution, until after the whole proceedings shall have been transmitted to the Secretary of War, to be laid before the President of the United States for his confirmation or disapproval, and orders in the case. All other sentences may be confirmed and executed by the officer ordering the court to assemble, or the commanding officer for the time being, as the case may be.

ART. 66. Every officer commanding a regiment or corps may appoint, for his own regiment or corps, courts-martial, to consist of three commissioned officers, for the trial and punishment of offenses not capital, and decide upon their sentences. For the same purpose, all officers commanding any of the garrisons, forts, barracks, or other places where the troops consist of different corps, may assemble courts-martial, to consist of three commissioned officers, and decide upon their sentences.

ART. 67. No garrison or regimental court-martial shall have the power to try capital cases or commissioned officers; neither shall they inflict a fine exceeding one month's pay, nor imprison, nor put to hard labor, any non-commissioned officer or soldier for a longer time than one month.

ART. 68. Whenever it may be found convenient and necessary to the public service, the officers of the marines shall be associated with the officers of the land forces, for the purpose of holding courts-martial, and trying offenders belonging to either; and, in such cases, the orders of the senior officer of either corps who may be present and duly authorized, shall be received and obeyed.

ART. 69. The judge advocate, or some person deputed by him, or by the general, or officer commanding the army, detachment, or garrison, shall prosecute in the name of the United States, but shall so far consider himself as counsel for the prisoner, after the said prisoner shall have made his plea, as to object to any leading question to any of the witnesses or any question to the prisoner, the answer to which might tend to criminate himself; and administer to each member of the court, before they proceed upon any trial, the following oath, which shall also be taken by all members of the regimental and garrison courts-martial.

"You, A. B., do swear that you will well and truly try and determine, according to evidence, the matter now before you, between the United

States of America and the prisoner to be tried, and that you will duly administer justice, according to the provisions of 'An act establishing Rules and Articles for the government of the armies of the United States,' without partiality, favor, or affection; and if any doubt should arise, not explained by said Articles, according to your conscience, the best of your understanding, and the custom of war in like cases; and you do further swear that you will not divulge the sentence of the court until it shall be published by the proper authority; neither will you disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof, as a witness, by a court of justice, in a due course of law. So help you God."

As soon as the said oath shall have been administered to the respective members, the president of the court shall administer to the judge advocate, or person officiating as such, an oath in the following words:

"You, A. B., do swear, that you will not disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof, as a witness, by a court of justice, in due course of law; nor divulge the sentence of the court to any but the proper authority, until it shall be duly disclosed by the same. So help you God."

ART. 70. When a prisoner, arraigned before a general court-martial, shall, from obstinacy and deliberate design, stand mute, or answer foreign to the purpose, the court may proceed to trial and judgment as if the prisoner had regularly pleaded not guilty.

ART. 71. When a member shall be challenged by a prisoner, he must state his cause of challenge, of which the court shall, after due deliberation, determine the relevancy or validity, and decide accordingly; and no challenge to more than one member at a time shall be received by the court.

ART. 72. All the members of a court-martial are to behave with decency and calmness; and in giving their votes are to begin with the youngest in commission.

ART. 73. All persons who give evidence before a court-martial are to be examined on oath or affirmation, in the following form:

"You swear, or affirm (as the case may be), the evidence you shall give in the cause now in hearing shall be the truth, the whole truth, and nothing but the truth. So help you God."

ART. 74. On the trials of cases not capital, before courts-martial, the deposition of witnesses, not in the line or staff of the army, may be taken before some justice of the peace, and read in evidence; provided the prosecutor and person accused are present at the taking the same, or are duly notified thereof.

ART. 75. No officer shall be tried but by a general court-martial, nor by officers of an inferior rank, if it can be avoided. No shall any proceedings of trials be carried on, excepting between the hours of eight in the morning and three in the afternoon, excepting in cases which, in the opinion of the officer appointing the court-martial, require immediate example.

ART. 76. No person whatsoever shall use any menacing words, signs, or gestures, in presence of a court-martial, or shall cause any disorder or riot, or disturb their proceedings, on the penalty of being punished at the discretion of the said court-martial.

ART. 77. Whenever any officer shall be charged with a crime, he shall be arrested and confined in his barracks, quarters, or tent, and deprived

of his sword by the commanding officer. And any officer who shall leave his confinement before he shall be set at liberty by his commanding officer, or by a superior officer, shall be cashiered.

ART. 78. Non-commissioned officers and soldiers, charged with crimes, shall be confined until tried by a court-martial, or released by proper authority.

ART. 79. No officer or soldier who shall be put in arrest shall continue in confinement more than eight days, or until such time as a court-martial can be assembled.

ART. 80. No officer commanding a guard, or provost marshal, shall refuse to receive or keep any prisoner committed to his charge by an officer belonging to the forces of the United States ; provided the officer committing shall, at the same time, deliver an account in writing, signed by himself, of the crime with which the said prisoner is charged.

ART. 81. No officer commanding a guard, or provost marshal, shall presume to release any person committed to his charge without proper authority for so doing, nor shall he suffer any person to escape, on the penalty of being punished for it by the sentence of a court-martial.

ART. 82. Every officer or provost marshal, to whose charge prisoners shall be committed, shall, within twenty-four hours after such commitment, or as soon as he shall be relieved from his guard, make report in writing, to the commanding officer, of their names, their crimes, and the names of the officers who committed them, on the penalty of being punished for disobedience or neglect, at the discretion of a court-martial.

ART. 83. Any commissioned officer convicted before a general court-martial of conduct unbecoming an officer and a gentleman, shall be dismissed the service.

ART. 84. In cases where a court-martial may think it proper to sentence a commissioned officer to be suspended from command, they shall have power also to suspend his pay and emoluments for the same time, according to the nature and heinousness of the offense.

ART. 85. In all cases where a commissioned officer is cashiered for cowardice or fraud, it shall be added in the sentence, that the crime, name, and place of abode, and punishment of the delinquent, be published in the newspapers in and about the camp, and of the particular State from which the offender came, or where he usually resides ; after which it shall be deemed scandalous for an officer to associate with him.

ART. 86. The commanding officer of any post or detachment, in which there shall not be a number of officers adequate to form a general court-martial, shall, in cases which require the cognizance of such a court, report to the commanding officer of the department, who shall order a court to be assembled at the nearest post or department, and the party accused, with necessary witnesses, to be transported to the place where the said court shall be assembled.

ART. 87. No person shall be sentenced to suffer death but by the concurrence of two-thirds of the members of a general court-martial, nor except in the cases herein expressly mentioned; nor shall more than fifty lashes be inflicted on any offender, at the discretion of a court-martial; and no officer, non-commissioned officer, soldier, or follower of the army, shall be tried a second time for the same offense.

ART. 88. No person shall be liable to be tried and punished by a general court-martial for any offense which shall appear to have been committed more than two years before the issuing of the order for such

trial, unless the person, by reason of having absented himself, or some other manifest impediment, shall not have been amenable to justice within that period.

ART. 89. Every officer authorized to order a general court-martial shall have power to pardon or mitigate any punishment ordered by such court, except the sentence of death, or of cashiering an officer; which, in the cases where he has authority (by Article 65) to carry them into execution, he may suspend, until the pleasure of the President of the United States can be known; which suspension, together with copies of the proceedings of the court-martial, the said officer shall immediately transmit to the President for his determination. And the colonel or commanding officer of the regiment or garrison where any regimental or garrison court-martial shall be held, may pardon or mitigate any punishment ordered by such court to be inflicted.

ART. 90. Every judge advocate, or person officiating as such, at any general court-martial, shall transmit, with as much expedition as the opportunity of time and distance of place can admit, the original proceedings and sentence of such court-martial to the Secretary of War; which said original proceedings and sentence shall be carefully kept and preserved in the office of said Secretary, to the end that the persons entitled thereto may be enabled, upon application to the said office, to obtain copies thereof.

The party tried by any general court-martial shall, upon demand thereof, made by himself, or by any person or persons in his behalf, be entitled to a copy of the sentence and proceedings of such court-martial.

ART. 91. In cases where the general, or commanding officer may order a court of inquiry to examine into the nature of any transaction, accusation, or imputation against any officer or soldier, the said court shall consist of one or more officers, not exceeding three, and a judge advocate, or other suitable person, as a recorder, to reduce the proceedings and evidence to writing; all of whom shall be sworn to the faithful performance of their duty. This court shall have the same power to summon witnesses as a court-martial, and to examine them on oath. But they shall not give their opinion on the merits of the case, excepting they shall be thereto specially required. The parties accused shall also be permitted to cross-examine and interrogate the witnesses, so as to investigate fully the circumstances in the question.

ART. 92. The proceedings of a court of inquiry must be authenticated by the signature of the recorder and the president, and delivered to the commanding officer, and the said proceedings may be admitted as evidence by a court-martial, in cases not capital, or extending to the dismissal of an officer, provided that the circumstances are such that oral testimony cannot be obtained. But as courts of inquiry may be perverted to dishonorable purposes, and may be considered as engines of destruction to military merit, in the hands of weak and envious commandants, they are hereby prohibited, unless directed by the President of the United States, or demanded by the accused.

ART. 93. The judge advocate or recorder shall administer to the members the following oath:

"You shall well and truly examine and inquire, according to your evidence, into the matter now before you, without partiality, favor, affection, prejudice, or hope of reward. So help you God."

After which the president shall administer to the judge advocate or recorder the following oath :

"You, A. B., do swear that you will, according to your best abilities, accurately and impartially record the proceedings of the court, and the evidence to be given in the case in hearing. So help you God."

The witnesses shall take the same oath as witnesses sworn before a court-martial.

ART. 94. When any commissioned officer shall die or be killed in the service of the United States, the major of the regiment, or the officer doing the major's duty in his absence, or in any post or garrison, the second officer in command, or the assistant military agent, shall immediately secure all his effects or equipage, then in camp or quarters, and shall make an inventory thereof, and forthwith transmit the same to the office of the Department of War, to the end that his executors or administrators may receive the same.

ART. 95. When any non-commissioned officer or soldier shall die, or be killed in the service of the United States, the then commanding officer of the troop or company shall, in the presence of two other commissioned officers, take an account of what effects he died possessed of, above his arms and accoutrements, and transmit the same to the office of the Department of War, which said effects are to be accounted for, and paid to the representatives of such deceased non-commissioned officer or soldier. And in case any of the officers, so authorized to take care of the effects of deceased officers and soldiers, should, before they have accounted to their representatives for the same, have occasion to leave the regiment or post, by preferment or otherwise, they shall, before they be permitted to quit the same, deposit in the hands of the commanding officer, or of the assistant military agent, all the effects of such deceased non-commissioned officers and soldiers, in order that the same may be secured for, and paid to, their respective representatives.

ART. 96. All officers, conductors, gunners, matrosses, drivers, or other persons whatsoever, receiving pay or hire in the service of the artillery, or corps of engineers of the United States, shall be governed by the aforesaid Rules and Articles, and shall be subject to be tried by courts-martial, in like manner with the officers and soldiers of the other troops in the service of the United States.

ART. 97. The officers and soldiers of any troops, whether militia or others, being mustered and in pay of the United States, shall, at all times and in all places, when joined, or acting in conjunction with the regular forces of the United States, be governed by these rules and articles of war, and shall be subject to be tried by courts-martial in like manner with the officers and soldiers in the regular forces; save only that such courts-martial shall be composed entirely of militia officers.

ART. 98. All officers serving by commission from the authority of any particular State, shall, on all detachments, courts-martial, or other duty, wherein they may be employed in conjunction with the regular forces of the United States, take rank next after all officers of the like grade in said regular forces, notwithstanding the commissions of such militia or State officers may be elder than the commissions of the officers of the regular forces of the United States.

ART. 99. All crimes not capital, and all disorders and neglects which officers and soldiers may be guilty of, to the prejudice of good order and military discipline, though not mentioned in the foregoing articles of



war, are to be taken cognizance of by a general or regimental court-martial, according to the nature and degree of the offense, and be punished at their discretion.

ART. 100. The President of the United States shall have power to prescribe the uniform of the army.

ART. 101. The foregoing articles are to be read and published, once in every six months, to every garrison, regiment, troop, or company, mustered, or to be mustered, in the service of the United States, and are to be duly observed and obeyed by all officers and soldiers who are, or shall be, in said service.

SEC. 2. *And be it further enacted*, That in time of war, all persons not citizens of, or owing allegiance to, the United States of America, who shall be found lurking as spies in or about the fortifications or encampments of the armies of the United States, or any of them, shall suffer death, according to the law and usage of nations, by sentence of a general court-martial.

SEC. 3. *And be it further enacted*, That the rules and regulations by which the armies of the United States have heretofore been governed, and the resolves of Congress thereunto annexed, and respecting the same, shall henceforth be void and of no effect, except so far as may relate to any transactions under them prior to the promulgation of this act, at the several posts and garrisons respectively, occupied by any part of the army of the United States.

## XIII.

## AMERICAN ARTICLES OF WAR OF 1874.

(AS ENACTED JUNE 22, 1874, WITH AMENDMENTS SINCE MADE.)

SEC. 1342, (Rev. Sts.)—The armies of the United States shall be governed by the following rules and articles. The word officer, as used therein, shall be understood to designate commissioned officers; the word soldier shall be understood to include non-commissioned officers, musicians, artificers, and privates, and other enlisted men, and the convictions mentioned therein shall be understood to be convictions by court-martial.

ARTICLE 1.—Every officer now in the army of the United States shall, within six months from the passing of this Act, and every officer hereafter appointed shall, before he enters upon the duties of his office, subscribe these rules and articles.

ART. 2.—These rules and articles shall be read to every enlisted man at the time of, or within six days after, his enlistment, and he shall thereupon take an oath or affirmation in the following form: "I, A. B., do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America; that I will serve them honestly and faithfully against all their enemies whomsoever; and that I will obey the orders of the President of the United States, and the orders of the officers appointed over me, according to the rules and articles of war." This oath may be taken before any commissioned officer of the Army.

ART. 3.—Every officer who knowingly enlists or musters into the military service any minor over the age of sixteen years without the written consent of his parents or guardians, or any minor under the age of sixteen years, or any insane or intoxicated persons, or any deserter from the military or naval service of the United States, or any person who has been convicted of any infamous criminal offense, shall, upon conviction, be dismissed from the service, or suffer such other punishment as a court-martial may direct.

ART. 4.—No enlisted man, duly sworn, shall be discharged from the service without a discharge in writing, signed by a field-officer of the regiment to which he belongs, or by the commanding officer, when no field-officer is present; and no discharge shall be given to any enlisted man before his term of service has expired, except by order of the President, the Secretary of War, the commanding officer of a department, or by sentence of a general court-martial.

ART. 5.—Any officer who knowingly musters as a soldier a person who is not a soldier shall be deemed guilty of knowingly making a false muster, and punished accordingly.

ART. 6.—Any officer who takes money, or other thing, by way of gratification, on mustering any regiment, troop, battery, or company, or on signing muster-rolls, shall be dismissed from the service, and shall

thereby be disabled to hold any office or employment in the service of the United States.

ART. 7.—Every officer commanding a regiment, an independent troop, battery, or company, or a garrison, shall, in the beginning of every month, transmit through the proper channels, to the Department of War, an exact return of the same, specifying the names of the officers then absent from their posts, with the reasons for and the time of their absence. And any officer who, through neglect or design, omits to send such returns, shall, on conviction thereof, be punished as a court-martial may direct.

ART. 8.—Every officer who knowingly makes a false return to the Department of War, or to any of his superior officers, authorized to call for such returns, of the state of the regiment, troop or company, or garrison under his command; or of the arms, ammunition, clothing or other stores thereunto belonging, shall, on conviction thereof before a court-martial, be cashiered.

ART. 9.—All public stores taken from the enemy shall be secured for the service of the United States; and for neglect thereof the commanding officer shall be answerable.

ART. 10.—Every officer commanding a troop, battery, or company, is charged with the arms, accouterments, ammunition, clothing, or other military stores belonging to his command, and is accountable to his colonel in case of their being lost, spoiled, or damaged otherwise than by unavoidable accident, or on actual service.

ART. 11.—Every officer commanding a regiment or an independent troop, battery, or company, not in the field, may, when actually quartered with such command, grant furloughs to the enlisted men in such numbers and for such time as he shall deem consistent with the good of the service. Every officer commanding a regiment, or an independent troop, battery, or company, in the field, may grant furloughs not exceeding thirty days at one time, to five per centum of the enlisted men, for good conduct in the line of duty, but subject to the approval of the commander of the forces of which said enlisted men form a part. Every company officer of a regiment, commanding any troop, battery, or company not in the field, or commanding in any garrison, fort, post, or barrack may, in the absence of his field-officer, grant furloughs to the enlisted men, for a time not exceeding twenty days in six months, and not to more than two persons to be absent at the same time.

ART. 12.—At every muster of a regiment, troop, battery, or company, the commanding officer thereof shall give to the mustering officer certificates, signed by himself, stating how long absent officers have been absent and the reasons of their absence. And the commanding officer of every troop, battery, or company shall give like certificates, stating how long absent non-commissioned officers and private soldiers have been absent and the reasons of their absence. Such reasons and time of absence shall be inserted in the muster-rolls opposite the names of the respective absent officers and soldiers, and the certificates, together with the muster-rolls, shall be transmitted by the mustering officer to the Department of War, as speedily as the distance of the place and muster will admit.

ART. 13.—Every officer who signs a false certificate, relating to the absence or pay of an officer or soldier, shall be dismissed from the service.

ART. 14.—Any officer who knowingly makes a false muster of man or

horse, or who signs, or directs, or allows the signing of any muster-roll, knowing the same to contain a false muster, shall, upon proof thereof by two witnesses, before a court-martial, be dismissed from the service, and shall thereby be disabled to hold any office or employment in the service of the United States.

ART. 15.—Any officer who, willfully or through neglect, suffers to be lost, spoiled, or damaged, any military stores belonging to the United States, shall make good the loss or damage, and be dismissed from the service.

ART. 16.—Any enlisted man who sells, or willfully or through neglect wastes the ammunition delivered out to him, shall be punished as a court-martial may direct.

ART. 17.—Any soldier who sells or, through neglect, loses or spoils his horse, arms, clothing, or accouterments, shall suffer such stoppages, not exceeding one-half of his current pay, as a court-martial may deem sufficient for repairing the loss or damage, and shall be punished by confinement or such other corporal punishment as the court may direct.

ART. 18.—Any officer commanding in any garrison, fort, or barracks of the United States who, for his private advantage, lays any duty or imposition upon, or is interested in, the sale of any victuals, liquors, or other necessities of life, brought into such garrison, fort, or barracks, for the use of the soldiers, shall be dismissed from the service.

ART. 19.—Any officer who uses contemptuous or disrespectful words against the President, the Vice-President, the Congress of the United States, or the chief magistrate or legislature of any of the United States in which he is quartered, shall be dismissed from the service, or otherwise punished, as a court-martial may direct. Any soldier who so offends shall be punished as a court-martial may direct.

ART. 20.—Any officer or soldier who behaves himself with disrespect toward his commanding officer shall be punished as a court-martial may direct.

ART. 21.—Any officer or soldier who, on any pretense whatsoever, strikes his superior officer, or draws or lifts up any weapon, or offers any violence against him, being in the execution of his office, or disobeys any lawful command of his superior officer, shall suffer death, or such other punishment as a court-martial may direct.

ART. 22.—Any officer or soldier who begins, excites, causes, or joins in any mutiny or sedition, in any troop, battery, company, party, post, detachment, or guard, shall suffer death, or such other punishment as a court-martial may direct.

ART. 23.—Any officer or soldier who, being present at any mutiny or sedition, does not use his utmost endeavor to suppress the same, or having knowledge of any intended mutiny or sedition, does not, without delay, give information thereof to his commanding officer, shall suffer death, or such other punishment as a court-martial may direct.

ART. 24.—All officers, of what condition soever, have power to part and quell all quarrels, frays, and disorders, whether among persons belonging to his own or to another corps, regiment, troop, battery, or company, and to order officers into arrest, and non-commissioned officers and soldiers into confinement, who take part in the same, until their proper superior officer is acquainted therewith. And whosoever, being so ordered, refuses to obey such officer or non-commissioned officer, or

draws a weapon upon him, shall be punished as a court-martial may direct.

ART. 25.—No officer or soldier shall use any reproachful or provoking speeches or gestures to another. Any officer who so offends shall be put in arrest. Any soldier who so offends shall be confined, and required to ask pardon of the party offended, in the presence of his commanding officer.

ART. 26.—No officer or soldier shall send a challenge to another officer or soldier to fight a duel, or accept a challenge so sent. Any officer who so offends shall be dismissed from the service. Any soldier who so offends shall suffer such punishment as a court-martial may direct.

ART. 27.—Any officer or non-commissioned officer, commanding a guard, who, knowingly and willingly, suffers any person to go forth to fight a duel, shall be punished as a challenger; and all seconds or promoters of duels, and carriers of challenges to fight duels, shall be deemed principals, and punished accordingly. It shall be the duty of any officer commanding an army, regiment, troop, battery, company, post, or detachment, who knows or has reason to believe that a challenge has been given or accepted by any officer or enlisted man under his command, immediately to arrest the offender and bring him to trial.

ART. 28.—Any officer or soldier who upbraids another officer or soldier for refusing a challenge shall himself be punished as a challenger; and all officers and soldiers are hereby discharged from any disgrace or opinion of disadvantage which might arise from their having refused to accept challenges, as they will only have acted in obedience to the law, and have done their duty as good soldiers, who subject themselves to discipline.

ART. 29.—Any officer who thinks himself wronged by the commanding officer of his regiment, and, upon due application to such commander, is refused redress, may complain to the general commanding in the State or Territory where such regiment is stationed. The general shall examine into said complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, transmit to the Department of War a true statement of such complaint, with the proceedings had thereon.

ART. 30.—Any soldier who thinks himself wronged by any officer may complain to the commanding officer of his regiment, who shall summon a regimental court-martial for the doing of justice to the complainant. Either party may appeal from such regimental court-martial to a general court-martial; but if, upon such second hearing, the appeal appears to be groundless and vexatious, the party appealing shall be punished at the discretion of said general court-martial.

ART. 31.—Any officer or soldier who lies out of his quarters, garrison, or camp, without leave from his superior officer, shall be punished as a court-martial may direct.

ART. 32.—Any soldier who absents himself from his troop, battery, company, or detachment, without leave from his commanding officer, shall be punished as a court-martial may direct.

ART. 33.—Any officer or soldier who fails, except when prevented by sickness or other necessity, to repair, at the fixed time, to the place of parade, exercise, or other rendezvous appointed by his commanding officer, or goes from the same, without leave from his commanding officer, before he is dismissed or relieved, shall be punished as a court-martial may direct.

ART. 34.—Any soldier who is found one mile from camp, without leave in writing from his commanding officer, shall be punished as a court-martial may direct.

ART. 35.—Any soldier who fails to retire to his quarters or tent at the beating of retreat, shall be punished according to the nature of his offense.

ART. 36.—No soldier belonging to any regiment, troop, battery, or company shall hire another to do his duty for him, or be excused from duty, except in cases of sickness, disability, or leave of absence. Every such soldier found guilty of hiring his duty, and the person so hired to do another's duty, shall be punished as a court-martial may direct.

ART. 37.—Every non-commissioned officer who connives at such hiring of duty shall be reduced. Every officer who knows and allows such practices shall be punished as a court-martial may direct.

ART. 38.—Any officer who is found drunk on his guard, party, or other duty, shall be dismissed from the service. Any soldier who so offends shall suffer such punishment as a court-martial may direct. No court-martial shall sentence any soldier to be branded, marked or tattooed.

ART. 39.—Any sentinel who is found sleeping upon his post, or who leaves it before he is regularly relieved, shall suffer death, or such other punishment as a court-martial may direct.

ART. 40.—Any officer or soldier who quits his guard, platoon, or division, without leave from his superior officer, except in a case of urgent necessity, shall be punished as a court-martial may direct.

ART. 41.—Any officer who, by any means whatsoever, occasions false alarms in camp, garrison, or quarters, shall suffer death, or such other punishment as a court-martial may direct.

ART. 42.—Any officer or soldier who misbehaves himself before the enemy, runs away, or shamefully abandons any fort, post, or guard, which he is commanded to defend, or speaks words inducing others to do the like, or casts away his arms or ammunition, or quits his post or colors to plunder or pillage, shall suffer death or such other punishment as a court-martial may direct.

ART. 43.—If any commander of any garrison, fortress, or post is compelled, by the officers and soldiers under his command, to give up to the enemy or to abandon it, the officers or soldiers so offending shall suffer death, or such other punishment as a court-martial may direct.

ART. 44.—Any person belonging to the armies of the United States who makes known the watchword to any person not entitled to receive it, according the rules and discipline of war, or presumes to give a parole or watchword different from that which he received, shall suffer death, or such other punishment as a court-martial may direct.

ART. 45.—Whosoever relieves the enemy with money, victuals, or ammunition, or knowingly harbors or protects an enemy, shall suffer death, or such other punishment as a court-martial may direct.

ART. 46.—Whosoever holds correspondence with, or gives intelligence to, the enemy, either directly or indirectly, shall suffer death, or such other punishment as a court-martial may direct.

ART. 47.—Any officer or soldier who, having received pay, or having been duly enlisted in the service of the United States, deserts the same, shall, in time of war, suffer death, or such other punishment as a court-

martial may direct; and in time of peace, any punishment, excepting death, which a court-martial may direct.

ART. 48.—Every soldier who deserts the service of the United States shall be liable to serve for such period as shall, with the time he may have served previous to his desertion, amount to the full term of his enlistment; and such soldier shall be tried by a court-martial and punished, although the term of his enlistment may have elapsed previous to his being apprehended and tried.

ART. 49.—Any officer who, having tendered his resignation, quits his post or proper duties, without leave, and with intent to remain permanently absent therefrom, prior to due notice of the acceptance of the same, shall be deemed and punished as a deserter.

ART. 50.—No non-commissioned officer or soldier shall enlist himself in any other regiment, troop, or company, without a regular discharge from the regiment, troop, or company in which he last served, on a penalty of being reputed a deserter, and suffering accordingly. And in case any officer shall knowingly receive and entertain such non-commissioned officer or soldier, or shall not, after his being discovered to be a deserter, immediately confine him and give notice thereof to the corps in which he last served, the said officer shall, by a court-martial, be cashiered.

ART. 51.—Any officer or soldier who advises or persuades any other officer or soldier to desert the service of the United States, shall, in time of war, suffer death, or such other punishment as a court-martial may direct; and in time of peace, any punishment, excepting death, which a court-martial may direct.

ART. 52. It is earnestly recommended to all officers and soldiers diligently to attend divine service. Any officer who behaves indecently or irreverently at any place of divine worship shall be brought before a general court-martial, there to be publicly and severely reprimanded by the president thereof. Any soldier who so offends shall, for his first offense, forfeit one-sixth of a dollar; for each further offense he shall forfeit a like sum, and shall be confined twenty-four hours. The money so forfeited shall be deducted from his next pay, and shall be applied, by the captain or senior officer of his troop, battery, or company, to the use of the sick soldiers of the same.

ART. 53.—Any officer who uses any profane oath or execration shall, for each offense, forfeit and pay one dollar. Any soldier who so offends shall incur the penalties provided in the preceding article; and all moneys forfeited for such offenses shall be applied as therein provided.

ART. 54.—Every officer commanding in quarters, garrison, or on the march, shall keep good order, and, to the utmost of his power, redress all abuses or disorders which may be committed by any officer or soldier under his command; and if, upon complaint made to him of officers or soldiers beating or otherwise ill-treating any person, disturbing fairs or markets, or committing any kind of riot, to the disquieting of the citizens of the United States, he refuses or omits to see justice done to the offender, and reparation made to the party injured, so far as part of the offender's pay shall go toward such reparation, he shall be dismissed from the service, or otherwise punished, as a court-martial may direct.

ART. 55.—All officers and soldiers are to behave themselves orderly in quarters and on the march; and whoever commits any waste or spoil, either in walks or trees, parks, warrens, fish-ponds, houses, gardens, grain-fields, inclosures, or meadows, or maliciously destroys any property what-

soever belonging to inhabitants of the United States, (unless by order of a general officer commanding a separate army in the field,) shall, besides such penalties as he may be liable to by law, be punished as a court-martial may direct.

ART. 56.—Any officer or soldier who does violence to any person bringing provisions or other necessities to the camp, garrison, or quarters of the forces of the United States in foreign parts, shall suffer death, or such other punishment as a court-martial may direct.

ART. 57.—Whosoever, belonging to the armies of the United States in foreign parts, or at any place within the United States or their Territories during rebellion against the supreme authority of the United States, forces a safeguard, shall suffer death.

ART. 58.—In time of war, insurrection, or rebellion, larceny, robbery, burglary, arson, mayhem, manslaughter, murder, assault and battery with an intent to kill, wounding, by shooting or stabbing, with an intent to commit murder, rape, or assault and battery with an intent to commit rape, shall be punishable by the sentence of a general court-martial, when committed by persons in the military service of the United States, and the punishment in any such case shall not be less than the punishment provided, for the like offense, by the laws of the State, Territory, or district in which such offense may have been committed.

ART. 59.—When any officer or soldier is accused of a capital crime, or of any offense against the person or property of any citizen of any of the United States, which is punishable by the laws of the land, the commanding officer, and the officers of the regiment, troop, battery, company, or detachment, to which the person so accused belongs, are required, except in time of war, upon application duly made by or in behalf of the party injured, to use their utmost endeavors to deliver him over to the civil magistrate, and to aid the officers of justice in apprehending and securing him, in order to bring him to trial. If, upon such application, any officer refuses or willfully neglects, except in time of war, to deliver over such accused person to the civil magistrates, or to aid the officers of justice in apprehending him, he shall be dismissed from the service.

ART. 60.—Any person in the military service of the United States who makes or causes to be made any claim against the United States, or any officer thereof, knowing such claim to be false or fraudulent; or

Who presents or causes to be presented to any person in the civil or military service thereof, for approval or payment, any claim against the United States or any officer thereof, knowing such claim to be false or fraudulent; or

Who enters into any agreement or conspiracy to defraud the United States, by obtaining or aiding others to obtain the allowance or payment of any false or fraudulent claim; or

Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or against any officer thereof, makes or uses, or procures or advises the making or use of, any writing, or other paper, knowing to same to contain any false or fraudulent statement; or

Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or any officer thereof, makes, or procures or advises the making of, any



oath to any fact or to any writing or other paper, knowing such oath to be false; or

Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or any officer thereof, forges or counterfeits, or procures or advises the forging or counterfeiting of, any signature upon any writing or other paper, or uses, or procures or advises the use of, any such signature, knowing the same to be forged or counterfeited; or

Who, having charge, possession, custody or control of any money or other property of the United States, furnished or intended for the military service thereof, knowingly delivers, or causes to be delivered, to any person having authority to receive the same, any amount thereof less than that for which he receives a certificate or receipt; or

Who, being authorized to make or deliver any paper certifying the receipt of any property of the United States, furnished or intended for the military service thereof, makes, or delivers to any person, such writing, without having full knowledge of the truth of the statements therein contained, and with intent to defraud the United States; or

Who steals, embezzles, knowingly and willfully misappropriates, applies to his own use or benefit, or wrongfully or knowingly sells or disposes of any ordnance, arms, equipments, ammunition, clothing, subsistence stores, money, or other property of the United States, furnished or intended for the military service thereof; or

Who knowingly purchases, or receives in pledge for any obligation or indebtedness, from any soldier, officer, or other person who is a part of or employed in said forces or service, any ordnance, arms, equipments, ammunition, clothing, subsistence stores, or other property of the United States, such soldier, officer, or other person not having lawful right to sell or pledge the same,

Shall, on conviction thereof, be punished by fine or imprisonment, or by such other punishment as a court-martial may adjudge. And if any person, being guilty of any of the offenses aforesaid, while in the military service of the United States, receives his discharge, or is dismissed from the service, he shall continue to be liable to be arrested and held for trial and sentence by a court-martial, in the same manner and to the same extent as if he had not received such discharge nor been dismissed.

ART. 61.—Any officer who is convicted of conduct unbecoming an officer and a gentleman shall be dismissed from the service.

ART. 62.—All crimes not capital, and all disorders and neglects, which officers and soldiers may be guilty of, to the prejudice of good order and military discipline, though not mentioned in the foregoing articles of war, are to be taken cognizance of by a general, or a regimental, garrison, or field-officers' court-martial, according to the nature and degree of the offense, and punished at the discretion of such court.

ART. 63.—All retainers to the camp, and all persons serving with the armies of the United States in the field, though not enlisted soldiers, are to be subject to orders, according to the rules and discipline of war.

ART. 64.—The officers and soldiers of any troops, whether militia or others, mustered and in pay of the United States, shall, at all times and in all places, be governed by the articles of war, and shall be subject to be tried by courts-martial.

ART. 65.—Officers charged with crime shall be arrested and confined in their barracks, quarters, or tents, and deprived of their swords by the

commanding officer. And any officer who leaves his confinement before he is set at liberty by his commanding officer shall be dismissed from the service.

ART. 66.—Soldiers charged with crimes shall be confined until tried by court-martial, or released by proper authority.

ART. 67.—No provost-marshal, or officer commanding a guard, shall refuse to receive or keep any prisoner committed to his charge by an officer belonging to the forces of the United States; provided the officer committing shall, at the same time, deliver an account in writing, signed by himself, of the crime charged against the prisoner.

ART. 68.—Every officer to whose charge a prisoner is committed shall, within twenty-four hours after such commitment, or as soon as he is relieved from his guard, report in writing, to the commanding officer, the name of such prisoner, the crime charged against him, and the name of the officer committing him; and if he fails to make such report, he shall be punished as a court-martial may direct.

ART. 69.—Any officer who presumes, without proper authority, to release any prisoner committed to his charge, or suffers any prisoner so committed to escape, shall be punished as a court-martial may direct.

ART. 70.—No officer or soldier put in arrest shall be continued in confinement more than eight days, or until such time as a court-martial can be assembled.

ART. 71.—When an officer is put in arrest for the purpose of trial, except at remote military posts or stations, the officer by whose order he is arrested shall see that a copy of the charges on which he is to be tried is served upon him within eight days after his arrest, and that he is brought to trial within ten days thereafter, unless the necessities of the service prevent such trial; and then he shall be brought to trial within thirty days after the expiration of said ten days. If a copy of the charges be not served, or the arrested officer be not brought to trial, as herein required, the arrest shall cease. But officers released from arrest, under the provisions of this article, may be tried, whenever the exigencies of the service shall permit, within twelve months after such release from arrest.

ART. 72.—Any general officer commanding an army, a Territorial Division or a Department, or colonel commanding a separate Department may appoint general courts-martial whenever necessary. But when any such commander is the accuser or prosecutor of any officer under his command the court shall be appointed by the President; and its proceedings and sentence shall be sent directly to the Secretary of War, by whom they shall be laid before the President, for his approval or orders in the case.

ART. 73.—In time of war the commander of a division, or of a separate brigade of troops, shall be competent to appoint a general court-martial. But when such commander is the accuser or prosecutor of any person under his command, the court shall be appointed by the next higher commander.

ART. 74.—Officers who may appoint a court-martial shall be competent to appoint a judge-advocate for the same.

ART. 75.—General courts-martial may consist of any number of officers from five to thirteen, inclusive; but they shall not consist of less than thirteen when that number can be convened without manifest injury to the service.

ART. 76.—When the requisite number of officers to form a general court-martial is not present in any post or detachment, the commanding officer shall, in cases which require the cognizance of such a court, report to the commanding officer of the department, who shall, thereupon, order a court to be assembled at the nearest post or department at which there may be such a requisite number of officers, and shall order the party accused, with necessary witnesses, to be transported to the place where the said court shall be assembled.

ART. 77.—Officers of the Regular Army shall not be competent to sit on courts-martial to try the officers or soldiers of other forces, except as provided in Article 78.

ART. 78.—Officers of the Marine Corps, detached for service with the Army by order of the President, may be associated with officers of the Regular Army on courts-martial for the trial of offenders belonging to the Regular Army, or to forces of the Marine Corps so detached; and in such cases the orders of the senior officer of either corps, who may be present and duly authorized, shall be obeyed.

ART. 79.—Officers shall be tried only by general courts-martial; and no officer shall, when it can be avoided, be tried by officers inferior to him in rank.

ART. 80.—In time of war a field-officer may be detailed in every regiment, to try soldiers thereof for offenses not capital; and no soldier serving with his regiment, shall be tried by a regimental or garrison court-martial when a field-officer of his regiment may be so detailed.

ART. 81.—Every officer commanding a regiment or corps shall, subject to the provisions of article eighty, be competent to appoint, for his own regiment or corps, courts-martial, consisting of three officers, to try offenses not capital.

ART. 82.—Every officer commanding a garrison, fort, or other place, where the troops consist of different corps, shall, subject to the provisions of article eighty, be competent to appoint, for such garrison or other place, courts-martial, consisting of three officers, to try offenses not capital.

ART. 83.—Regimental and garrison courts-martial, and field-officers detailed to try offenders, shall not have power to try capital cases or commissioned officers, or to inflict a fine exceeding one month's pay, or to imprison or put to hard labor any non-commissioned officer or soldier for a longer time than one month.

ART. 84.—The judge-advocate shall administer to each member of the court, before they proceed upon any trial, the following oath, which shall also be taken by all members of regimental and garrison courts-martial: "You, A B, do swear that you will well and truly try and determine, according to evidence, the matter now before you, between the United States of America and the prisoner to be tried, and that you will duly administer justice, without partiality, favor, or affection, according to the provisions of the rules and articles for the government of the armies of the United States, and if any doubt should arise, not explained by said articles, then according to your conscience, the best of your understanding, and the custom of war in like cases; and you do further swear that you will not divulge the sentence of the court until it shall be published by the proper authority; neither will you disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof, as a witness, by a court of justice, in a due course of law. So help you God."

ART. 85.—When the oath has been administered to the members of a court-martial, the president of the court shall administer to the judge advocate, or person officiating as such, an oath in the following form: "You, A B, do swear that you will not disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof, as a witness, by a court of justice, in due course of law; nor divulge the sentence of the court to any but the proper authority, until it shall be duly disclosed by the same. So help you God."

ART. 86.—A court-martial may punish, at discretion, any person who uses any menacing words, signs, or gestures, in its presence, or who disturbs its proceedings by any riot or disorder.

ART. 87.—All members of a court-martial are to behave with decency and calmness.

ART. 88.—Members of a court-martial may be challenged by a prisoner, but only for cause stated to the court. The court shall determine the relevancy and validity thereof, and shall not receive a challenge to more than one member at a time.

ART. 89.—When a prisoner, arraigned before a general court-martial, from obstinacy and deliberate design, stands mute, or answers foreign to the purpose, the court may proceed to trial and judgment, as if the prisoner had pleaded not guilty.

ART. 90.—The judge advocate, or some person deputed by him, or by the general or officer commanding the army, detachment, or garrison, shall prosecute in the name of the United States, but when the prisoner has made his plea, he shall so far consider himself counsel for the prisoner as to object to any leading question to any of the witnesses, and to any question to the prisoner, the answer to which might tend to criminate himself.

ART. 91.—The depositions of witnesses residing beyond the limits of the State, Territory, or district in which any military court may be ordered to sit, if taken on reasonable notice to the opposite party and duly authenticated, may be read in evidence before such court in cases not capital.

ART. 92.—All persons who give evidence before a court-martial shall be examined on oath, or affirmation, in the following form: "You swear (or affirm) that the evidence you shall give, in the case now in hearing, shall be the truth, the whole truth, and nothing but the truth. So help you God."

ART. 93.—A court-martial shall, for reasonable cause, grant a continuance to either party, for such time, and as often as may appear to be just: *Provided*, That if the prisoner be in close confinement, the trial shall not be delayed for a period longer than sixty days.

ART. 94.—Proceedings of trials shall be carried on only between the hours of eight in the morning and three in the afternoon, excepting in cases which, in the opinion of the officer appointing the court, require immediate example.

ART. 95.—Members of a court-martial, in giving their votes, shall begin with the youngest in commission.

ART. 96.—No person shall be sentenced to suffer death, except by the concurrence of two-thirds of the members of a general court-martial, and in the cases herein expressly mentioned.

ART. 97.—No person in the military service shall, under the sentence of a court-martial, be punished by confinement in a penitentiary, unless the offense of which he may be convicted would, by some statute of the

United States, or by some statute of the State, Territory, or District in which such offense may be committed, or by the common law, as the same exists in such State, Territory, or District, subject such convict to such punishment.

ART. 98.—No person in the military service shall be punished by flogging, or by branding, marking, or tattooing on the body.

ART. 99.—No officer shall be discharged or dismissed from the service, except by order of the President, or by sentence of a general court-martial; and in time of peace no officer shall be dismissed, except in pursuance of the sentence of a court-martial, or in mitigation thereof.

ART. 100.—When an officer is dismissed from the service for cowardice or fraud, the sentence shall further direct that the crime, punishment, name, and place of abode of the delinquent shall be published in the newspapers in and about the camp, and in the State from which the offender came, or where he usually resides; and after such publication it shall be scandalous for an officer to associate with him.

ART. 101.—When a court-martial suspends an officer from command, it may also suspend his pay and emoluments for the same time, according to the nature of his offense.

ART. 102.—No person shall be tried a second time for the same offense.

ART. 103.—No person shall be liable to be tried and punished by a general court-martial for any offense which appears to have been committed more than two years before the issuing of the order for such trial, unless, by reason of having absented himself, or of some other manifest impediment, he shall not have been amenable to justice within that period.

ART. 104.—No sentence of a court-martial shall be carried into execution until the whole proceedings shall have been approved by the officer ordering the court, or by the officer commanding for the time being.

ART. 105.—No sentence of a court-martial inflicting the punishment of death, shall be carried into execution until it shall have been confirmed by the President; except in the cases of persons convicted, in time of war, as spies, mutineers, deserters, or murderers, and in the cases of guerilla marauders, convicted, in time of war, of robbery, burglary, arson, rape, assault with intent to commit rape, or of violation of the laws and customs of war; and in such excepted cases the sentence of death may be carried into execution upon confirmation by the commanding general in the field, or the commander of the department, as the case may be.

ART. 106.—In time of peace no sentence of a court-martial, directing the dismissal of an officer, shall be carried into execution, until it shall have been confirmed by the President.

ART. 107.—No sentence of a court-martial appointed by the commander of a division or of a separate brigade of troops, directing the dismissal of an officer, shall be carried into execution until it shall have been confirmed by the general commanding the army in the field to which the division or brigade belongs.

ART. 108.—No sentence of a court-martial, either in time of peace or in time of war, respecting a general officer, shall be carried into execution, until it shall have been confirmed by the President.

ART. 109.—All sentences of a court-martial may be confirmed and carried into execution by the officer ordering the court, or by the officer commanding for the time being, where confirmation by the Presi-

dent, or by the commanding general in the field, or commander of the department, is not required by these articles.

ART. 110.—No sentence of a field-officer, detailed to try soldiers of his regiment, shall be carried into execution, until the whole proceedings shall have been approved by the brigade commander, or, in case there be no brigade commander, by the commanding officer of the post.

ART. 111.—Any officer who has authority to carry into execution the sentence of death, or of dismissal of an officer, may suspend the same until the pleasure of the President shall be known; and, in such case, he shall immediately transmit to the President a copy of the order of suspension, together with a copy of the proceedings of the court.

ART. 112.—Every officer who is authorized to order a general court-martial shall have power to pardon or mitigate any punishment adjudged by it, except the punishment of death or of dismissal of an officer. Every officer commanding a regiment or garrison in which a regimental or garrison court-martial may be held, shall have power to pardon or mitigate any punishment which such court may adjudge.

ART. 113.—Every judge-advocate, or person acting as such, at any general court-martial, shall, with as much expedition as the opportunity of time and distance of place may admit, forward the original proceedings and sentence of such court to the Judge-Advocate General of the Army, in whose office they shall be carefully preserved.

ART. 114.—Every party tried by a general court-martial shall, upon demand thereof, made by himself or by any person in his behalf, be entitled to a copy of the proceedings and sentence of such court.

ART. 115.—A court of inquiry, to examine into the nature of any transaction of, or accusation or imputation against, any officer or soldier, may be ordered by the President or by any commanding officer; but, as courts of inquiry may be perverted to dishonorable purposes, and may be employed in the hands of weak and envious commandants, as engines for the destruction of military merit, they shall never be ordered by any commanding officer, except upon a demand by the officer or soldier whose conduct is to be inquired of.

ART. 116.—A court of inquiry shall consist of one or more officers, not exceeding three, and a recorder, to reduce the proceedings and evidence to writing.

ART. 117.—The recorder of a court of inquiry shall administer to the members the following oath: "You shall well and truly examine and inquire, according to the evidence, into the matter now before you, without partiality, favor, affection, prejudice, or hope of reward: so help you God." After which the president of the court shall administer to the recorder the following oath: "You, A B, do swear that you will, according to your best abilities, accurately and impartially record the proceedings of the court and the evidence to be given in the case in hearing: so help you God."

ART. 118.—A court of inquiry, and the recorder thereof, shall have the same power to summon and examine witnesses as is given to courts-martial and the judge-advocates thereof. Such witnesses shall take the same oath which is taken by witnesses before courts-martial, and the party accused shall be permitted to examine and cross-examine them, so as fully to investigate the circumstances in question.

ART. 119.—A court of inquiry shall not give an opinion on the merits of the case inquired of unless specially ordered to do so.

ART. 120.—The proceedings of a court of inquiry must be authenti-

cated by the signatures of the recorder and the president thereof, and delivered to the commanding officer.

ART. 121.—The proceedings of a court of inquiry may be admitted as evidence by a court-martial, in cases not capital, nor extending to the dismissal of an officer : *Provided*, That the circumstances are such that oral testimony cannot be obtained.

ART. 122.—If, upon marches, guards, or in quarters, different corps of the Army happen to join or do duty together, the officer highest in rank of the line of the Army, Marine Corps, or militia, by commission, there on duty or in quarters, shall command the whole, and give orders for what is needful to the service, unless otherwise specially directed by the President, according to the nature of the case.

ART. 123.—In all matters relating to the rank, duties, and rights of officers, the same rules and regulations shall apply to officers of the Regular Army and to volunteers commissioned in, or mustered into said service, under the laws of the United States, for a limited period.

ART. 124.—Officers of the militia of the several States, when called into the service of the United States, shall on all detachments, courts-martial, and other duty wherein they may be employed in conjunction with the regular or volunteer forces of the United States, take rank next after all officers of the like grade in said regular or volunteer forces, notwithstanding the commissions of such militia officers may be older than the commissions of the said officers of the regular or volunteer forces of the United States.

ART. 125.—In case of the death of any officer, the major of his regiment, or the officer doing the major's duty, or the second officer in command at any post or garrison, as the case may be, shall immediately secure all his effects then in camp or quarters, and shall make, and transmit to the office of the Department of War, an inventory thereof.

ART. 126.—In case of the death of any soldier, the commanding officer of his troop, battery, or company shall immediately secure all his effects then in camp or quarters, and shall, in the presence of two other officers, make an inventory thereof, which he shall transmit to the office of the Department of War.

ART. 127.—Officers charged with the care of the effects of deceased officers or soldiers shall account for and deliver the same, or the proceeds thereof, to the legal representatives of such deceased officers or soldiers. And no officer so charged shall be permitted to quit the regiment or post until he has deposited in the hands of the commanding officer all the effects of such deceased officers or soldiers not so accounted for and delivered.

ART. 128.—The foregoing articles shall be read and published, once in every six months, to every garrison, regiment, troop, or company in the service of the United States, and shall be duly observed and obeyed by all officers and soldiers in said service.

SEC. 1343.—All persons who, in time of war, or of rebellion against the supreme authority of the United States, shall be found lurking or acting as spies, in or about any of the fortifications, posts, quarters, or encampments of any of the armies of the United States, or elsewhere, shall be triable by a general court-martial or by a military commission, and shall, on conviction thereof, suffer death.

## XIV.

## ARMY ACT, 1881.\*

[44 &amp; 45 VICT. CH. 58.]

## CHAPTER 58.

An Act to consolidate the Army Discipline and Regulation Act, 1879, and the subsequent Acts amending the same.

[27th August, 1881.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

*Preliminary.*

1. This Act may be cited for all purposes as the Army Act, 1881.
2. This Act shall continue in force only for such time and subject to such provisions as may be specified in an annual Act of Parliament bringing into force or continuing the same.
3. This Act is divided into five parts, relating to the following subject-matters; that is to say,
  - Part I, discipline :
  - Part II, enlistment :
  - Part III, billeting and impressment of carriages :
  - Part IV, general provisions :
  - Part V, application of military law, saving provisions, and definitions.

**Part I.—Discipline.**

## CRIMES AND PUNISHMENTS.

*Offences in respect of Military Service.*

4. Every person subject to military law who commits any of the following offences; that is to say,
  - (1.) Shamefully abandons or delivers up any garrison, place, post, or guard, or uses any means to compel or induce any governor, commanding officer, or other person shamefully to abandon or deliver up any garrison, place, post, or guard, which it was the duty of such governor, officer, or person to defend; or

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\*The author has incorporated in the body of this Act the amendments of the same made by the Army [Annual] Acts of 1882, 1883, 1884, and 1885.



- (2.) Shamefully casts away his arms, ammunition, or tools in the presence of the enemy; or
- (3.) Treacherously holds correspondence with or gives intelligence to the enemy, or treacherously or through cowardice sends a flag of truce to the enemy; or
- (4.) Assists the enemy with arms, ammunition, or supplies, or knowingly harbours or protects an enemy not being a prisoner; or
- (5.) Having been made a prisoner of war, voluntarily serves with or voluntarily aids the enemy; or
- (6.) Knowingly does when on active service any act calculated to imperil the success of Her Majesty's forces or any part thereof; or
- (7.) Misbehaves or induces others to misbehave before the enemy in such manner as to show cowardice,

shall on conviction by court-martial be liable to suffer death, or such less punishment as is in this Act mentioned.

**5.** Every person subject to military law who on active service commits any of the following offences; that is to say,

- (1.) Without orders from his superior officer leaves the ranks, in order to secure prisoners or horses, or on pretence of taking wounded men to the rear; or
- (2.) Without orders from his superior officer wilfully destroys or damages any property; or
- (3.) Is taken prisoner, by want of due precaution, or through disobedience of orders, or wilful neglect of duty, or having been taken prisoner fails to rejoin Her Majesty's service when able to rejoin the same; or
- (4.) Without due authority either holds correspondence with, or gives intelligence to, or sends a flag of truce to the enemy; or
- (5.) By word of mouth or in writing or by signals or otherwise spreads reports calculated to create unnecessary alarm or despondency; or
- (6.) In action, or previously to going into action, uses words calculated to create alarm or despondency,

shall on conviction by court-martial be liable to suffer penal servitude, or such less punishment as is in this Act mentioned.

**6.** (1.) Every person subject to military law who commits any of the following offences; that is to say,

- (a.) Leaves his commanding officer to go in search of plunder; or
- (b.) Without orders from his superior officer, leaves his guard, picket, patrol, or post; or
- (c.) Forces a safeguard; or
- (d.) Forces or strikes a soldier when acting as sentinel; or
- (e.) Impedes the provost marshal or any assistant provost marshal or any officer or non-commissioned officer or other person legally exercising authority under or on behalf of the provost marshal, or, when called on, refuses to assist in the execution of his duty the provost marshal, assistant provost marshal, or any such officer, non-commissioned officer, or other person; or
- (f.) Does violence to any person bringing provisions or supplies to the forces; or commits any offence against the property or person of any inhabitant of or resident in the country in which he is serving; or

- (g.) Breaks into any house or other place in search of plunder; or
- (h.) By discharging firearms, drawing swords, beating drums, making signals, using words, or by any means whatever, intentionally occasions false alarms in action, on the march, in the field, or elsewhere; or
- (i.) Treacherously makes known the parole, watchword, or countersign to any person not entitled to receive it; or treacherously gives a parole, watchword, or countersign different from what he received; or
- (j.) Irregularly detains or appropriates to his own corps, battalion, or detachment any provisions or supplies proceeding to the forces, contrary to any orders issued in that respect; or
- (k.) Being a soldier acting as sentinel, commits any of the following offences; that is to say,
  - (i.) sleeps or is drunk on his post; or
  - (ii.) leaves his post before he is regularly relieved,

shall, on conviction by court-martial,

if he commits any such offence on active service, be liable to suffer death, or such less punishment as is in this Act mentioned; and

if he commits any such offence not on active service, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

(2.) Every person subject to military law who commits any of the following offences; that is to say,

(a.) By discharging firearms, drawing swords, beating drums, making signals, using words, or by any means whatever, negligently occasions false alarms in action, on the march, in the field, or elsewhere; or

(b.) Makes known the parole, watchword, or countersign to any person not entitled to receive it; or, without good and sufficient cause, gives a parole, watchword, or countersign different from what he received,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

#### *Mutiny and Insubordination.*

7. Every person subject to military law who commits any of the following offences; that is to say,

(1.) Causes or conspires with any other persons to cause any mutiny or sedition in any forces belonging to Her Majesty's regular, reserve, or auxiliary forces, or Navy; or

(2.) Endeavours to seduce any person in Her Majesty's regular, reserve, or auxiliary forces, or Navy, from allegiance to Her Majesty, or to persuade any person in Her Majesty's regular, reserve, or auxiliary forces, or Navy, to join in any mutiny or sedition; or

(3.) Joins in, or being present does not use his utmost endeavours to suppress, any mutiny or sedition in any forces belonging to Her Majesty's regular, reserve, or auxiliary forces, or Navy; or

(4.) Coming to the knowledge of any actual or intended mutiny or sedition in any forces belonging to Her Majesty's regular, reserve, or

auxiliary forces, or Navy, does not without delay inform his commanding officer of the same, shall on conviction by court-martial be liable to suffer death, or such less punishment as is in this Act mentioned.

8. 1. Every person subject to military law who commits any of the following offences; that is to say,

Strikes or uses or offers any violence to his superior officer, being in the execution of his office, shall on conviction by court-martial be liable to suffer death, or such less punishment as is in this Act mentioned; and

2. Every person subject to military law who commits any of the following offences; that is to say,

Strikes or uses or offers any violence to his superior officer, or uses threatening or insubordinate language to his superior officer, shall on conviction by court-martial, if he commits such offence on active service, be liable to suffer penal servitude, or such less punishment as is in this Act mentioned; and

if he commits such offence not on active service, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

9. 1. Every person subject to military law who commits the following offence; that is to say,

Disobeys in such manner as to show a wilful defiance of authority any lawful command given personally by his superior officer in the execution of his office, whether the same is given orally, or in writing, or by signal, or otherwise, shall on conviction by court-martial be liable to suffer death, or such less punishment as is in this Act mentioned; and

2. Every person subject to military law who commits the following offence; that is to say,

Disobeys any lawful command given by his superior officer, shall, on conviction by court-martial, if he commits such offence on active service, be liable to suffer penal servitude, or such less punishment as is in this Act mentioned; and

if he commits such offence not on active service, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

10. Every person subject to military law who commits any of the following offences; that is to say,

- (1.) Being concerned in any quarrel, fray, or disorder, refuses to obey any officer (though of inferior rank) who orders him into arrest, or strikes or uses or offers violence to any such officer; or
- (2.) Strikes or uses or offers violence to any person, whether subject to military law or not, in whose custody he is placed, and whether he is or is not his superior officer; or
- (3.) Resists an escort whose duty it is to apprehend him or to have him in charge; or

(4.) Being a soldier breaks out of barracks, camp, or quarters, shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

**11.** Every person subject to military law who commits the following offence; that is to say,

Neglects to obey any general or garrison or other orders, shall, on conviction by court-martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

Provided that the expression "general orders" in this section shall not include Her Majesty's regulations and orders for the army or any similar order in the nature of a regulation published for the general information and guidance of the army.

*Desertion, Fraudulent Enlistment, and Absence without Leave.*

**12.** 1. Every person subject to military law who commits any of the following offences; that is to say,

- (a.) Deserts or attempts to desert Her Majesty's service; or
- (b.) Persuades, endeavours to persuade, procures or attempts to procure, any person subject to military law to desert from Her Majesty's service,

shall, on conviction by court-martial—

if he committed such offence when on active service or under orders for active service, be liable to suffer death, or such less punishment as is in this Act mentioned; and

if he committed such offence under any other circumstances, be liable for the first offence to suffer imprisonment, or such less punishment as is in this Act mentioned; and for the second or any subsequent offence to suffer penal servitude, or such less punishment as is in this Act mentioned.

2. Where an offender has fraudulently enlisted once or oftener, he may, for the purposes of trial for the offence of deserting or attempting to desert Her Majesty's service, be deemed to belong to any one or more of the corps to which he has been appointed or transferred, as well as to the corps to which he properly belongs; and it shall be lawful to charge an offender with any number of offences against this section at the same time, and to give evidence of such offences against him, and if he be convicted thereof to punish him accordingly; and further it shall be lawful on conviction of a person for two or more such offences to award him the higher punishment allowed by this section for a second offence as if he had been convicted by a previous court-martial of one of such offences.

3. For the purposes of the liability under this section to the higher punishment for a second offence, a previous offence of fraudulent enlistment may be reckoned as a previous offence under this section.

**13.** 1. Every person subject to military law who commits any of the following offences; that is to say,

(a.) When belonging to either the regular forces or the militia when embodied, without having first obtained a regular discharge therefrom, or otherwise fulfilled the conditions enabling him to enlist, enlists in Her Majesty's regular forces, or

(b.) When belonging to the regular forces without having fulfilled the conditions enabling him to enlist, enrol, or enter, enrolls himself, or enlists in the militia or in any of the reserve forces, not subject to military law, or enters the Royal Navy,

shall be deemed to have been guilty of fraudulent enlistment, and shall on conviction by court-martial be liable—

(i.) for the first offence to suffer imprisonment, or such less punishment as is in this Act mentioned; and

(ii.) for the second or any subsequent offence to suffer penal servitude, or such less punishment as is in this Act mentioned.

2. Where an offender has fraudulently enlisted on several occasions he may, for the purposes of this section, be deemed to belong to any one or more of the corps to which he has been appointed or transferred, as well as to the corps to which he properly belongs; and it shall be lawful to charge an offender with any number of offences against this section at the same time, and to give evidence of such offences against him, and if he be convicted thereof to punish him accordingly; and further it shall be lawful on conviction of a person for two or more such offences to award him the higher punishment allowed by this section for a second offence as if he had been convicted by a previous court-martial of one of such offences.

3. Where an offender is convicted of the offence of fraudulent enlistment then for the purposes of his liability under this section to the higher punishment for a second offence, the offence of deserting or attempting to desert Her Majesty's service may be reckoned as a previous offence of fraudulent enlistment under this section, with this exception, that the absence of the offender next before any fraudulent enlistment shall not upon his conviction for that fraudulent enlistment be reckoned as a previous offence of deserting or attempting to desert.

**14.** Every person subject to military law who commits any of the following offences; that is to say,

(1.) Assists any person subject to military law to desert Her Majesty's service; or

(2.) Being cognizant of any desertion or intended desertion of a person subject to military law, does not forthwith give notice to his commanding officer, or take any steps in his power to cause the deserter or intending deserter to be apprehended,

shall on conviction by court-martial be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

**15.** Every person subject to military law who commits any of the following offences; that is to say,

(1.) Absents himself without leave; or

(2.) Fails to appear at the place of parade or rendezvous appointed by his commanding officer, or goes from thence without leave before he is relieved, or without urgent necessity quits the ranks; or

(3.) Being a soldier, when in camp or garrison or elsewhere, is found

beyond any limits fixed or in any place prohibited by any general garrison or other order, without a pass or written leave from his commanding officer ; or

- (4.) Being a soldier, without leave from his commanding officer, or without due cause, absents himself from any school when duly ordered to attend there,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

*Disgraceful Conduct.*

**16.** Every officer who, being subject to military law, commits the following offence; that is to say,  
behaves in a scandalous manner, unbecoming the character of an officer and a gentleman,  
shall on conviction by court-martial be cashiered.

**17.** Every person subject to military law who commits any of the following offences; that is to say,

Being charged with or concerned in the care or distribution of any public or regimental money or goods, steals, fraudulently misapplies, or embezzles the same, or is concerned in or connives at the stealing, fraudulent misapplication, or embezzlement thereof, or wilfully damages any such goods,

shall on conviction by court-martial be liable to suffer penal servitude, or such less punishment as is in this Act mentioned.

**18.** Every soldier who commits any of the following offences; that is to say,

- (1.) Malingers, or feigns or produces disease or infirmity; or
- (2.) Wilfully maims or injures himself or any other soldier, whether at the instance of such other soldier or not, with intent thereby to render himself or such other soldier unfit for service, or causes himself to be maimed or injured by any person, with intent thereby to render himself unfit for service; or
- (3.) Is wilfully guilty of any misconduct, or wilfully disobeys, whether in hospital or otherwise, any orders, by means of which misconduct or disobedience he produces or aggravates disease or infirmity, or delays its cure; or
- (4.) Steals or embezzles or receives knowing them to be stolen or embezzled any money or goods the property of a comrade or of an officer, or any money or goods belonging to any regimental mess or band, or to any regimental institution, or any public money or goods; or
- (5.) Is guilty of any other offence of a fraudulent nature not before in this Act particularly specified, or of any other disgraceful conduct of a cruel, indecent, or unnatural kind,

shall on conviction by court-martial be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

*Drunkenness.*

**19.** Every person subject to military law who commits the following offence; that is to say,

The offence of drunkenness, whether on duty or not on duty, shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned, and, either in addition to or in substitution for any other punishment, to pay a fine not exceeding one pound.

*Offences in relation to Prisoners.*

**20.** Every person subject to military law who commits any of the following offences; that is to say,

(1.) When in command of a guard, picket, patrol, or post, releases without proper authority, whether wilfully or otherwise, any prisoner committed to his charge; or

(2.) Wilfully or without reasonable excuse allows to escape any prisoner who is committed to his charge, or whom it is his duty to keep or guard,

shall on conviction by court-martial be liable if he has acted wilfully to suffer penal servitude, or such less punishment as is in this Act mentioned, and in any case to suffer imprisonment, or such less punishment as is in this Act mentioned.

**21.** Every person subject to military law who commits any of the following offences; that is to say,

(1.) Unnecessarily detains a prisoner in arrest or confinement without bringing him to trial, or fails to bring his case before the proper authority for investigation; or

(2.) Having committed a person to the custody of any officer, non-commissioned officer, provost marshal, or assistant provost marshal, fails without reasonable cause to deliver at the time of such committal, or as soon as practicable, and in any case within twenty-four hours thereafter, to the officer, non-commissioned officer, provost marshal, or assistant provost marshal, into whose custody the person is committed, an account in writing signed by himself of the offence with which the person so committed is charged;

(3.) Being in command of a guard, does not as soon as he is relieved from his guard or duty, or, if he is not sooner relieved, within twenty-four hours after a prisoner is committed to his charge, give in writing to the officer to whom he may be ordered to report the prisoner's name and offence so far as known to him; and the name and rank of the officer or other person by whom he was charged, accompanied, if he has received the account above in this section mentioned, by that account,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

**22.** Every person subject to military law who commits the following offence; that is to say,

Being in arrest or confinement, or in prison or otherwise in lawful custody, escapes or attempts to escape, shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

*Offences in relation to Property.*

**23.** Every person subject to military law who commits any of the following offences; that is to say,

- (1.) Connives at the exaction of any exorbitant price for a house or stall let to a sutler; or
- (2.) Lays any duty upon, or takes any fee or advantage in respect of, or is in any way interested in, the sale of provisions or merchandize brought into any garrison, camp, station, barrack, or place, in which he has any command or authority, or the sale or purchase of any provisions or stores for the use of any of Her Majesty's forces,

shall on conviction by court-martial be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

**24.** Every soldier who commits any of the following offences; that is to say,

- (1.) Makes away with, or is concerned in making away with (whether by pawning, selling, destruction, or otherwise howsoever), his arms, ammunition, equipments, instruments, clothing, regimental necessaries, or any horse of which he has charge; or
- (2.) Loses by neglect anything before in this section mentioned; or
- (3.) Makes away with (whether by pawning, selling, destruction, or otherwise however) any military decoration granted to him; or
- (4.) Wilfully injures anything before in this section mentioned or any property belonging to a comrade, or to an officer, or to any regimental mess or band, or to any regimental institution, or any public property; or
- (5.) Ill-treats any horse used in the public service,

shall on conviction by court-martial be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

*Offences in relation to False Documents and Statements.*

**25.** Every person subject to military law who commits any of the following offences; that is to say,

- (1.) In any report, return, muster roll, pay list, certificate, book, route, or other document made or signed by him, or of the contents of which it is his duty to ascertain the accuracy—
  - (a.) Knowingly makes or is privy to the making of any false or fraudulent statement; or
  - (b.) Knowingly makes or is privy to the making of any omission with intent to defraud; or
- (2.) Knowingly and with intent to defraud or to injure any person suppresses, defaces, alters, or makes away with any document which it is his duty to preserve or produce; or
- (3.) Where it is his official duty to make a declaration respecting any matter, knowingly makes a false declaration,



shall on conviction by court-martial be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

**96.** Every person subject to military law who commits any of the following offences; that is to say,

- (1.) When signing any document relating to pay, arms, ammunition, equipments, clothing, regimental necessaries, provisions, furniture, bedding, blankets, sheets, utensils, forage, or stores, leaves in blank any material part for which his signature is a voucher; or
- (2.) Refuses or by culpable neglect omits to make or send a report or return which it is his duty to make or send,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

**97.** Every person subject to military law who commits any of the following offences; that is to say,

- (1.) Being an officer or soldier, makes a false accusation against any other officer or soldier, knowing such accusation to be false; or
- (2.) Being an officer or soldier, in making a complaint where he thinks himself wronged, knowingly makes any false statement affecting the character of an officer or soldier, or knowingly and wilfully suppresses any material facts; or
- (3.) Being a soldier, falsely states to his commanding officer that he has been guilty of desertion or of fraudulent enlistment, or of desertion from the Navy, or has served in and been discharged from any portion of the regular forces, reserve forces or auxiliary forces, or the Navy; or
- (4.) Being a soldier, makes a wilfully false statement to any military officer or justice in respect of the prolongation of furlough,

shall on conviction by court-martial be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

#### *Offences in relation to Courts-martial.*

**98.** Every person subject to military law who commits any of the following offences; that is to say,

- (1.) Being duly summoned or ordered to attend as a witness before a court-martial, makes default in attending; or
- (2.) Refuses to take an oath or make a solemn declaration legally required by a court-martial to be taken or made; or
- (3.) Refuses to produce any document in his power or control legally required by a court-martial to be produced by him; or
- (4.) Refuses when a witness to answer any question to which a court-martial may legally require an answer; or
- (5.) Is guilty of contempt of a court-martial by using insulting or threatening language, or by causing any interruption or disturbance in the proceedings of such court,

shall on conviction by a court-martial other than the court in relation to or before whom the offence was committed be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act men-

tioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned:

Provided that where a person subject to military law is guilty of contempt of a court-martial by using insulting or threatening language, or by causing any interruption or disturbance in the proceedings of such court, that court, if they think it expedient, instead of the offender being tried by another court-martial, may by order under the hand of the president commit such offender to prison, there to be imprisoned, with or without hard labour, for a period not exceeding twenty-one days.

**29.** Every person subject to military law who commits the following offence; that is to say,

When examined on oath or solemn declaration before a court-martial, or any court or officer authorized by this Act to administer an oath, wilfully gives false evidence, shall be liable on conviction by court-martial to suffer imprisonment, or such less punishment as is in this Act mentioned.

*Offences in relation to Billeting.*

**30.** Every person subject to military law who commits any of the following offences (in this Act referred to as offences in relation to billeting); that is to say,

- (1.) Is guilty of any ill-treatment, by violence, extortion, or making disturbances in billets, of the occupier of a house in which any person or horse is billeted; or
- (2.) Being an officer, refuses or neglects, on complaint and proof of such ill-treatment by any officer or soldier under his command, to cause compensation to be made for the same; or
- (3.) Fails to comply with the provisions of this Act with respect to the payment of the just demands of the person on whom he or any officer or soldier under his command, or his or their horses, have been billeted, or to the making up and transmitting of an account of the money due to such person; or
- (4.) Wilfully demands billets which are not actually required for some person or horse entitled to be billeted; or
- (5.) Takes or knowingly suffers to be taken from any person any money or reward for excusing or relieving any person from his liability in respect of the billeting or quartering of officers, soldiers, or horses, or any part of such liability; or
- (6.) Uses or offers any menace to or compulsion on a constable or other civil officer to make him give billets contrary to this Act, or tending to deter or discourage him from performing any part of his duty under the provisions of this Act relating to billeting, or tending to induce him to do anything contrary to his said duty; or
- (7.) Uses or offers any menace to or compulsion on any person tending to oblige him to receive, without his consent, any person or horse not duly billeted upon him in pursuance of the provisions of this Act relating to billeting, or to furnish any accommodation which he is not thereby required to furnish,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and

if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

*Offences in relation to Impressment of Carriages.*

**31.** Every person subject to military law who commits any of the following offences (in this Act referred to as offences in relation to the impressment of carriages); that is to say,

- (1.) Wilfully demands any carriages, animals, or vessels which are not actually required for the purposes authorized by this Act; or
  - (2.) Fails to comply with the provisions of this Act relating to the impressment of carriages as regards the payment of sums due for carriages or as regards the weighing of the load; or
  - (3.) Constrains any carriage, animal, or vessel furnished in pursuance of the provisions of this Act relating to the impressment of carriages to travel against the will of the person in charge thereof beyond the proper distance, or to carry against the will of such person any greater weight than he is required by the said provisions to carry; or
  - (4.) Does not discharge as speedily as practicable any carriage, animal, or vessel furnished in pursuance of the provisions of this Act relating to the impressment of carriages; or
  - (5.) Compels the person in charge of any such carriage, animal, or vessel, or permits him to be compelled, to take thereon any baggage or stores not entitled to be carried, or, except where the carriage or animal is furnished upon a requisition of emergency, to take thereon any soldier or servant (except such as are sick), or any woman or person; or
  - (6.) Ill-treats or permits such person in charge to be ill-treated; or
  - (7.) Uses or offers any menace to or compulsion on a constable to make him provide any carriage, animal, or vessel which he is not bound in pursuance of the provisions of this Act relating to the impressment of carriages to provide, or tending to deter or discourage him from performing any part of his duty in relation to the providing of carriages, animals, or vessels, or tending to induce him to do anything contrary to his said duty; or
  - (8.) Forces any carriage, animal, or vessel from the owner thereof,
- shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

*Offences in relation to Enlistment.*

**32.** (1.) Every person having become subject to military law, who is discovered to have committed the following offence; that is to say, Having been discharged with disgrace from any part of Her Majesty's forces, or having been dismissed with disgrace from the Navy, has afterwards enlisted in the regular forces without declaring the circumstances of his discharge or dismissal, shall on conviction by court-martial be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

(2.) For the purpose of this section, the expression "discharged with disgrace from any part of Her Majesty's forces" means discharged

with ignominy, discharged as incorrigible and worthless, or discharged on account of conviction for felony or of a sentence of penal servitude.

**33.** Every person having become subject to military law who is discovered to have committed the following offence ; that is to say,  
To have made a wilfully false answer to any question set forth in the attestation paper which has been put to him by or by direction of the justice before whom he appears for the purpose of being attested,

shall on conviction by court-martial be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

**34.** Every person subject to military law who commits any of the following offences ; that is to say,

(1.) Is concerned in the enlistment for service in the regular forces of any man, when he knows or has reasonable cause to believe such man to be so circumstanced that by enlisting he commits an offence against this Act ; or

(2.) Wilfully contravenes any enactments or the regulations of the service in any manner relating to the enlistment or attestation of soldiers of the regular forces,

shall on conviction by court-martial be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

*Miscellaneous Military Offences.*

**35.** Every person subject to military law who commits the following offence ; that is to say,

Uses traitorous or disloyal words regarding the Sovereign, shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

**36.** Every person subject to military law who commits the following offence ; that is to say,

Whether serving with any of Her Majesty's forces or not, without due authority either verbally or in writing or by signal or otherwise, discloses the numbers or position of any forces, or any magazines or stores thereof, or any preparations for, or orders relating to, operations or movements of any forces, at such time and in such manner as in the opinion of the court to have produced effects injurious to Her Majesty's service,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

**37.** Every officer or non-commissioned officer who commits any of the following offences ; that is to say,

(1.) Strikes or otherwise ill-treats any soldier ; or

(2.) Having received the pay of any officer or soldier, unlawfully detains or unlawfully refuses to pay the same when due,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a non-commissioned officer, to suffer imprisonment or such less punishment as is in this Act mentioned.

**38.** Every person subject to military law who commits any of the following offences; that is to say,

(1.) Fights or promotes or is concerned in or connives at fighting a duel; or

(2.) Attempts to commit suicide,  
shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

**39.** Every person subject to military law who commits any of the following offences; that is to say,

On application being made to him neglects or refuses to deliver over to the civil magistrate, or to assist in the lawful apprehension of, any officer or soldier accused of an offence punishable by a civil court, shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

**40.** Every person subject to military law who commits any of the following offences; that is to say,

Is guilty of any act, conduct, disorder, or neglect, to the prejudice of good order and military discipline,  
shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned. Provided that no person shall be charged under this section in respect of any offence for which special provision is made in any other part of this Act, and which is not a civil offence; nevertheless the conviction of a person so charged shall not be invalid by reason only of the charge being in contravention of this proviso, unless it appears that injustice has been done to the person charged by reason of such contravention; but the responsibility of any officer for that contravention shall not be removed by the validity of the conviction.

*Offences punishable by ordinary Law.*

**41.** Subject to such regulations for the purpose of preventing interference with the jurisdiction of the civil courts as are in this Act after-mentioned, every person who, whilst he is subject to military law, shall commit any of the offences in this section mentioned shall be deemed to be guilty of an offence against military law, and if charged under this section with any such offence (in this Act referred to as a civil offence) shall be liable to be tried by court-martial, and on conviction to be punished as follows; that is to say,

(1.) If he is convicted of treason, be liable to suffer death, or such less punishment as is in this Act mentioned; and

(2.) If he is convicted of murder, be liable to suffer death; and

(3.) If he is convicted of manslaughter or treason-felony, be liable to

suffer penal servitude, or such less punishment as is in this Act mentioned; and

- (4.) If he is convicted of rape, be liable to suffer penal servitude, or such less punishment as is in this Act mentioned; and
- (5.) If he is convicted of any offence not before in this Act particularly specified which when committed in England is punishable by the law of England, be liable, whether the offence is committed in England or elsewhere, either to suffer such punishment as might be awarded to him in pursuance of this Act in respect of an act to the prejudice of good order and military discipline, or to suffer any punishment assigned for such offence by the law of England.

Provided as follows:—

- (a.) A person subject to military law shall not be tried by court-martial for treason, murder, manslaughter, treason-felony, or rape committed in the United Kingdom, and shall not be tried by court-martial for treason, murder, manslaughter, treason-felony, or rape committed in any place within Her Majesty's dominions, other than the United Kingdom and Gibraltar, unless such person at the time he committed the offence was on active service, or such place is more than one hundred miles as measured in a straight line from any city or town in which the offender can be tried for such offence by a competent civil court.
- (b.) A person subject to military law when in Her Majesty's dominions may be tried by any competent civil court for any offence for which he would be triable if he were not subject to military law.

#### *Redress of Wrongs.*

**42.** If an officer thinks himself wronged by his commanding officer, and on due application made to him does not receive the redress to which he may consider himself entitled, he may complain to the Commander-in-Chief, in order to obtain justice, who is hereby required to examine into such complaint, and through a Secretary of State make his report to Her Majesty in order to receive the directions of Her Majesty thereon.

**43.** If any soldier thinks himself wronged in any matter by any officer other than his captain, or by any soldier, he may complain thereof to his captain, and if he thinks himself wronged by his captain, either in respect of his complaint not being redressed or in respect of any other matter, he may complain thereof to his commanding officer, and if he thinks himself wronged by his commanding officer, either in respect of his complaint not being redressed or in respect of any other matter, he may complain thereof to the general or other officer commanding the district or station where the soldier is serving; and every officer to whom a complaint is made in pursuance of this section shall cause such complaint to be inquired into, and shall, if on inquiry he is satisfied of the justice of the complaint so made, take such steps as may be necessary for giving full redress to the complainant in respect of the matter complained of.

#### *Punishments.*

**44.** Punishments may be inflicted in respect of offences committed by persons subject to military law and convicted by courts-martial,—

In the case of officers, according to the scale following:

- a. Death.
- b. Penal servitude for a term not less than five years.
- c. Imprisonment, with or without hard labour, for a term not exceeding two years.
- d. Cashiering.
- e. Dismissal from Her Majesty's service.
- f. Forfeiture in the prescribed manner of seniority of rank, either in the army or in the corps to which the offender belongs, or in both.
- g. Reprimand, or severe reprimand.

In the case of soldiers, according to the scale following:

- h. Death.
- i. Penal servitude for a term not less than five years.
- k. Imprisonment, with or without hard labour, for a term not exceeding two years.
- l. Discharge with ignominy from Her Majesty's service.
- m. Reduction in the case of a non-commissioned officer to a lower grade, or to the ranks.
- n. Forfeitures, fines, and stoppages.

Provided that—

- (1.) Where in respect to any offence under this Act there is specified a particular punishment, or such less punishment as is in this Act mentioned, there may be awarded in respect of that offence, instead of such particular punishment (but subject to the other regulations of this Act as to punishments, and regard being had to the nature and degree of the offence), any one punishment lower in the above scales than the particular punishment.
- (2.) An officer shall be sentenced to be cashiered before he is sentenced to penal servitude or imprisonment.
- (3.) An officer when sentenced to forfeiture of seniority of rank may also be sentenced to reprimand or severe reprimand.
- (4.) A soldier when sentenced to penal servitude or imprisonment may, in addition thereto, be sentenced to be discharged with ignominy from Her Majesty's service.
- (5.) Where a soldier on active service is guilty of an aggravated offence of drunkenness, or of an offence of disgraceful conduct, or of any offence punishable with death or penal servitude, it shall be lawful for a court-martial to award for that offence such summary punishment other than flogging as may be directed by rules to be made from time to time by a Secretary of State; and such summary punishment shall be of the character of personal restraint or of hard labour, but shall not be of a nature to cause injury to life or limb, and shall not be inflicted where the confirming officer is of opinion that imprisonment can with due regard to the public service be carried into execution.
- (6.) The said summary punishment shall not be inflicted upon a non-commissioned officer, or upon a reduced non-commissioned officer, for any offence committed while holding the rank of non-commissioned officer.
- (7.) "An aggravated offence of drunkenness" for the purposes of this section means drunkenness committed on the march or otherwise

on duty, or after the offender was warned for duty, or when by reason of the drunkenness the offender was found unfit for duty; and notwithstanding anything in this Act it shall not be incumbent on the commanding officer to deal summarily with such aggravated offence of drunkenness.

- (8.) "An offence of disgraceful conduct" for the purposes of this section means any offence specified in section eighteen of this Act.
- (9.) All rules with respect to summary punishment made in pursuance of this section shall be laid before Parliament as soon as practicable after they are made, if Parliament be then sitting, and if Parliament be not then sitting, as soon as practicable after the beginning of the then next session of Parliament.
- (10.) For the purposes of commutation of punishment the summary punishment above mentioned shall be deemed to stand in the scale of punishments next below imprisonment.
- (11.) In addition to or without any other punishment in respect of any offence, an offender convicted by court-martial may be subject to forfeiture of any deferred pay, service towards pension, military decoration or military reward, in such manner as may for the time being be provided by Royal Warrant, but shall not, save as may be provided by Royal Warrant, be liable to any forfeiture under the Regimental Debts Act, 1863, or under any Act relating to the military savings banks, or any regulations made in pursuance of either of the above-mentioned Acts.
- (12.) In addition to or without any other punishment in respect of any offence, an offender may be sentenced by court-martial to any deduction authorized by this Act to be made from his ordinary pay.
- (13.) No officer or non-commissioned officer shall, under or by virtue of any power or authority derived from any foreign potentate or ruler, inflict, or cause to be inflicted, on any person subject to military law under this Act, for or in respect of any offence against such law, any punishment not authorized by this Act.

#### ARREST AND TRIAL.

##### *Arrest.*

**45.** The following regulations shall be enacted with respect to persons subject to military law when charged with offences punishable under this Act:

- (1.) Every person subject to military law when so charged may be taken into military custody: Provided that in every case where any officer or soldier not on active service remains in such military custody for a longer period than eight days without a court-martial for his trial being ordered to assemble, a special report of the necessity for further delay shall be made by his commanding officer in manner prescribed; and a similar report shall be forwarded every eight days until a court-martial is assembled or the officer or soldier is released from custody:
- (2.) Military custody means, according to the usages of the service, the putting the offender under arrest or the putting him in confinement:
- (3.) An officer may order into military custody an officer of inferior rank or any soldier, and any non-commissioned officer may order



into military custody any soldier, and an officer may order into military custody any officer (though he be of higher rank) engaged in a quarrel, fray, or disorder; and any such order shall be obeyed, notwithstanding the person giving the order and the person in respect of whom the order is given do not belong to the same corps, arm, or branch of the service:

- (4.) An officer or non-commissioned officer commanding a guard, or a provost-marshal or assistant provost-marshal, shall not refuse to receive or keep any person who is committed to his custody by any officer or non-commissioned officer, but it shall be the duty of the officer or non-commissioned officer who commits any person into custody to deliver at the time of such committal or as soon as practicable, and in every case within twenty-four hours thereafter, to the officer, non-commissioned officer, provost-marshal, or assistant provost-marshal into whose custody the person is committed, an account in writing, signed by himself, of the offence with which the person so committed is charged:
- (5.) The charge made against every person taken into military custody shall without unnecessary delay be investigated by the proper military authority, and, as soon as may be, either proceedings shall be taken for punishing the offence, or such person shall be discharged from custody.

*Power of Commanding Officer.*

**46.** (1.) The commanding officer shall upon an investigation being had of a charge made against a person subject to military law under his command of having committed an offence under this Act, dismiss the charge if he in his discretion thinks that it ought not to be proceeded with, but where he thinks the charge ought to be proceeded with, he may take steps for bringing the offender to a court-martial, or in the case of a soldier may deal with the case summarily.

(2.) Where he deals with a case summarily, he may,—

- (a.) Award to the offender imprisonment, with or without hard labour, for any period not exceeding seven days; and
- (b.) In the case of the offence of drunkenness, may order the offender to pay a fine not exceeding ten shillings, either in addition to or without imprisonment with or without hard labour; and
- (c.) In addition to or without any other punishment, may order the offender to suffer any deduction from his ordinary pay authorized by this Act to be made by the commanding officer.

(3.) Where the charge is against a soldier for drunkenness not on duty, and it is not an aggravated offence of drunkenness within the meaning of section forty-four of this Act, the commanding officer shall deal with the case summarily unless the soldier has been guilty of drunkenness on not less than four occasions in the preceding twelve months, but nothing in this sub-section shall affect the jurisdiction of any court-martial.

(4.) In the case of absence without leave, the commanding officer may award imprisonment, with or without hard labour, for any period not exceeding twenty-one days.

(5.) Provided that where imprisonment is awarded for absence without leave the commanding officer shall have regard to the number of days during which the offender has been absent, and in no case shall the

term of imprisonment awarded, if exceeding seven days, exceed the term of absence.

(6.) Provided that in every case where the power of summary award by a commanding officer exceeds a sentence of seven days imprisonment, the accused person may demand that the evidence against him should be taken on oath, and the same oath or solemn declaration as that required to be taken by witnesses before a court-martial shall be administered to each witness in such case.

(7.) An offender shall not be liable to be tried by court-martial for any offence which has been dealt with summarily by his commanding officer, and shall not be liable to be punished by his commanding officer for any offence of which he has been acquitted or convicted by a competent civil court or by a court-martial.

(8.) A soldier ordered by his commanding officer to suffer imprisonment or pay a fine, or to suffer any deduction from his ordinary pay, shall, if he so request, have a right to be tried by a district court-martial instead of submitting to such imprisonment, fine, or deduction.

(9.) Nothing in this section shall prejudice the power of a commanding officer to award such minor punishments as he is for the time being authorized to award, so, however, that a minor punishment shall not be awarded for any offence for which imprisonment exceeding seven days is awarded.

#### *Courts-martial.*

**47.** (1.) Any officer authorized by or in pursuance of this Act to convene general and district courts-martial or either of them, also any commanding officer of a rank not below the rank of captain, also any officer of a rank not below the rank of captain when in command of two or more corps or portions of two or more corps, also on board a ship, a commanding officer of any rank may, without warrant and by virtue of this Act, convene a regimental court-martial for the trial of offences committed by soldiers under his command.

(2.) Such court-martial shall consist of not less than three officers, each of whom must have held a commission during not less than one whole year.

(3.) The convening officer shall appoint the president.

(4.) The president of a regimental court-martial shall not be under the rank of captain, unless where the court-martial is held on the line of march, or on board any ship, or unless, in the opinion of the convening officer, such opinion to be expressed in the order convening the court and to be conclusive, a captain is not, with due regard to the public service, available, in any of which cases an officer of any rank may be president.

(5.) A regimental court-martial shall not try an officer, nor award the punishment of death or penal servitude, or of imprisonment in excess of forty-two days, or of discharge with ignominy; but, subject as aforesaid, and save as in this Act specially mentioned, any offence under this Act committed by a person subject to military law, and triable by court-martial, may be tried and punished by a regimental court-martial.

**48.** The following rules are enacted with respect to general courts-martial and district courts-martial :

(1.) A general court-martial shall be convened by Her Majesty, or

some officer deriving authority to convene a general court-martial immediately or mediately from Her Majesty:

- (2.) A district court-martial shall be convened by an officer authorized to convene general courts-martial, or some officer deriving authority to convene a district court-martial from an officer authorized to convene general courts-martial:
- (3.) A general court-martial shall consist in the United Kingdom, India, Malta, and Gibraltar, of not less than nine and elsewhere of not less than five officers, each of whom must have held a commission during not less than three whole years, and of whom not less than five must be of a rank not below that of captain:
- (4.) A district court-martial shall consist in the United Kingdom, India, Malta, and Gibraltar, of not less than five and elsewhere of not less than three officers, each of whom must have held a commission during not less than two whole years:
- (5.) The minimum number mentioned in this section for a general or a district court-martial shall be the legal minimum for that court-martial:
- (6.) A district court-martial shall not try a person subject to military law as an officer, nor award the punishment of death or penal servitude; but, subject as aforesaid, any offence under this Act committed by a person subject to military law, and triable by court-martial, may be tried and punished by either a general or district court-martial:
- (7.) An officer under the rank of captain shall not be a member of a court-martial for the trial of a field officer:
- (8.) Sentence of death shall not be passed on any prisoner without the concurrence of two thirds at the least of the officers serving on the court-martial by which he is tried:
- (9.) The president of a court-martial, whether general or district, shall be appointed by order of the authority convening the court, but he shall not be under the rank of field officer, unless the officer convening the court is under that rank, or unless in the opinion of the officer who convenes the court, such opinion to be expressed in the order convening the court, and to be conclusive, a field officer is not, with due regard to the public service, available, in either of which cases an officer not below the rank of captain may be the president of such court-martial, and he shall not be under the rank of captain, except in the case of a district court-martial, where in the opinion of the officer who convenes the court, such opinion to be expressed in the order convening the court, and to be conclusive, a captain is not, having due regard to the public service, available.

**49.** (1.) Where a complaint is made to any officer in command of any detachment or portion of troops in any country beyond the seas, that an offence has been committed by any person subject to military law under his command against the property or person of any inhabitant of or resident in such country,—

then, if in the opinion of such officer it is not practicable that such offence should be tried by an ordinary general court-martial, it shall be lawful for him, although not authorized to convene general courts-martial, to convene a court-martial, in this Act referred to as a field

general court-martial, for the trial of the person charged with such offence, provided as follows:

- (a.) A field general court-martial shall consist of not less than three officers;
- (b.) The convening officer may preside, but he shall, whenever he deems it practicable, appoint another officer as president, who may be of any rank, but shall, if practicable in the opinion of the convening officer, be not below the rank of captain.
- (2.) Section forty-eight of this Act shall not apply to a field general court-martial, but sentence of death shall not be passed on any prisoner by a field general court-martial without the concurrence of all the members.
- (3.) A field general court-martial may, notwithstanding the restrictions enacted by this Act in respect of the trial by court-martial of civil offences within the meaning of this Act, try any person subject to military law who is under the command of the convening officer, and is charged with any such offence as is mentioned in this section, and may award for such offence any sentence which a general court-martial is competent to award for such offence: Provided always, that no sentence of any such court-martial shall be executed until confirmed as provided by this Act.

**50.** (1.) The officers sitting on a court-martial may belong to the same or different corps, or may be unattached to any corps, and may try persons belonging or attached to any corps.

(2.) The officer who convened a court-martial shall not, save as is otherwise expressly provided by this Act, sit on that court-martial.

(3.) Any of the following persons, that is to say, a prosecutor or witness for the prosecution of any prisoner, or the commanding officer of the prisoner within the meaning of the provisions of this Act which relate to dealing with a case summarily, or the officer who investigated the charges on which a prisoner is arraigned, shall not, save in the case of a field general court-martial, sit on the court-martial for the trial of such prisoner, nor shall he act as judge advocate at such court-martial.

**51.** (1.) A prisoner about to be tried by any court-martial may object, for any reasonable cause, to any member of the court, including the president whether appointed to serve thereon originally or to fill a vacancy caused by the retirement of an officer objected to, so that the court may be constituted of officers to whom the prisoner makes no reasonable objection.

(2.) Every objection made by a prisoner to any officer shall be submitted to the other officers appointed to form the court.

(3.) If the objection is to the president, such objection, if allowed by one-third or more of the other officers appointed to form the court, shall be allowed, and the court shall adjourn for the purpose of the appointment of another president.

(4.) If an objection to the president is allowed, the authority convening the court shall appoint another president, subject to the same right of the prisoner to object.

(5.) If the objection is to a member other than the president, and is allowed by one-half or more of the votes of the officers entitled to vote, the objection shall be allowed, and the member objected to shall re-

tire, and his vacancy may be filled in the prescribed manner by another officer, subject to the same right of the prisoner to object.

(6.) In order to enable a prisoner to avail himself of his privilege of objecting to any officer, the names of the officers appointed to form the court shall be read over in the hearing of the prisoner on their first assembling, and before they are sworn, and he shall be asked whether he objects to any of such officers, and a like question shall be repeated in respect of any officer appointed to serve in lieu of a retiring officer.

**52.** (1.) An oath shall be administered by the prescribed person to every member of every court-martial before the commencement of the trial in the following form; that is to say, 'You, , do swear, that you will well and truly try the prisoner [*or prisoners*] before the court according to the evidence, and that you will duly administer justice according to the Army Act now in force, without partiality, favour, or affection, and you do further swear that you will not divulge the sentence of the court until it is duly confirmed, and you do further swear that you will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law. So help you God.'

(2.) An oath in the prescribed form or forms shall be administered by the prescribed person to the judge advocate or person officiating as judge advocate (if any), and also to every officer in attendance on a court-martial for the purpose of instruction (if any,) and also to every shorthand writer (if any) in attendance on the court-martial.

(3.) Every witness before a court-martial shall be examined on oath, which the president or other prescribed person shall administer in the prescribed form.

(4.) If a person by this Act required either as a member of, or person in attendance on, or witness before a court-martial, or otherwise in respect of a court-martial, to take an oath, objects to take an oath, or is objected to as incompetent to take an oath, the court if satisfied of the sincerity of the objection, or, where the competence of the person to take an oath is objected to, of the oath having no binding effect on the conscience of such person, shall permit such person instead of being sworn to make a solemn declaration in the prescribed form, and for the purposes of this Act such solemn declaration shall be deemed to be an oath.

**53.** (1.) If a court-martial after the commencement of the trial is, by death or otherwise, reduced below the legal minimum, it shall be dissolved.

(2.) If after the commencement of the trial the president dies or is otherwise unable to attend, and the court is not reduced below the legal minimum, the convening authority may appoint the senior member of the court, if of sufficient rank, to be president, and the trial shall proceed accordingly; but if he is not of sufficient rank the court shall be dissolved.

(3.) If, on account of the illness of the prisoner before the finding, it is impossible to continue the trial, a court-martial shall be dissolved.

(4.) Where a court-martial is dissolved under the foregoing provisions of this section the prisoner may be tried again.

(5.) The president of any court-martial may, on any deliberation amongst the members, cause the court to be cleared of all other persons.

(6.) The court may adjourn from time to time.

(7.) The court may also, where necessary, view any place.

(8.) In the case of an equality of votes on the finding the prisoner shall be deemed to be acquitted. In the case of an equality of votes on the sentence, or any question arising after the commencement of the trial except the finding, the president shall have a second or casting vote.

(9.) When a court-martial recommend a prisoner to mercy, such recommendation shall be attached to and form part of the proceedings of the court, and shall be promulgated and communicated to the prisoner, together with the finding and sentence.

**54.** (1.) The following authorities shall have power to confirm the findings and sentences of courts-martial; that is to say,

(a.) In the case of a regimental court-martial, the convening officer or officer having authority to convene such a court-martial at the date of the submission of the finding and sentence thereof:

(b.) In the case of a general court-martial, Her Majesty, or some officer deriving authority to confirm the findings and sentences of general courts-martial immediately or mediately from Her Majesty:

(c.) In the case of a district court-martial, an officer authorized to convene general courts-martial, or some officer deriving authority to confirm the findings and sentences of district courts-martial from an officer authorized to convene general courts-martial:

(d.) In the case of a field general court-martial, an officer authorized to confirm the findings and sentences of general courts-martial for the trial of offences in the force of which the detachment or portion of troops under the command of the convening officer forms part.

(2.) The authority having power to confirm the finding and sentence of a court-martial may send back such finding and sentence, or either of them, for revision once, but not more than once, and it shall not be lawful for the court on any revision to receive any additional evidence: and where the finding only is sent back for revision, the court shall have power without any direction to revise the sentence also. In no case shall the authority recommend the increase of a sentence, nor shall the court-martial on revisal of the sentence, either in obedience to the recommendation of an authority, or for any other reason, have the power to increase the sentence awarded.

(3.) The finding of acquittal, whether on all or some of the offences with which the prisoner is charged, shall not require confirmation or be subject to be revised, and if it relates to the whole of the offences shall be pronounced at once in open court, and the prisoner shall be discharged.

(4.) A member of a court-martial shall not have authority to confirm the finding or sentence of that court-martial, and where a member of a court-martial becomes confirming officer he shall refer the finding and sentence of the court-martial to a superior authority competent to confirm the findings and sentences of the like description of courts-martial, and that authority shall, for the purposes of this Act, be deemed to be in that instance the confirming authority; and where a court-martial is

held in a colony, and there is no such superior authority in that colony, the governor of that colony shall have power to confirm the finding and sentence of such court-martial in like manner in all respects as if he were such superior authority as above mentioned.

(5.) An officer having authority to confirm the finding and sentence of a court-martial may withhold his confirmation wholly or partly, and refer such finding and sentence or the part not confirmed to any superior authority competent to confirm the findings and sentences of the like description of courts-martial, and that authority shall for the purposes of this Act be deemed to be in that instance and to the extent of such reference the confirming authority.

(6.) Subject to the provisions of this Act with respect to the finding of acquittal, the finding and sentence of a court-martial shall not be valid except in so far as the same may be confirmed by an authority authorized to confirm the same.

(7.) Sentence of death when passed in a colony shall not, unless passed in respect of an offence committed on active service, be carried into effect unless, in addition to the confirmation otherwise required by this Act, it is approved by the governor of the colony.

(8.) Sentence of death when passed in India in respect of the offence of treason or murder shall not (except where the offence was committed on active service) be carried into effect unless, in addition to the confirmation otherwise required by this Act, it is approved by the Governor-General, or if the offender was tried within the limits of any presidency, by the Governor-General or the governor of that presidency.

(9.) When a person subject to military law is convicted of manslaughter or rape, or any other civil offence under the section of this Act relating to the trial by court-martial of civil offences, and is sentenced to penal servitude, such sentence shall not be carried into execution unless, in addition to the confirmation otherwise required by this Act, it is approved, if the offender has been tried in India by the Governor-General, or if the offender has been tried within the limits of any presidency, by the Governor-General or by the governor of the presidency, or if he has been tried in a colony, by the governor of the colony.

**55.** (1.) Where a person subject to military law and being on active service with any body of forces is charged with an offence, a summary court-martial may be convened and shall have jurisdiction to try such offence, if the officer convening the court is of opinion that an ordinary court-martial cannot, having due regard to the public service, be convened to try such offence.

(2.) A summary court-martial shall be convened and constituted, and the members and witnesses sworn, and its proceedings conducted, and its finding and sentence confirmed in such manner as may be provided by this section and rules from time to time made in pursuance of this Act; and sections fifty to fifty-four (both inclusive) of this Act shall not apply to such court-martial, provided that,—

(a.) A summary court-martial shall consist of not less than three officers, unless the officer convening the same is of opinion that three officers are not available, having due regard to the public service, in which case the court-martial may consist of two officers; and

(b.) Where a summary court-martial consists of less than three officers

the sentence shall not exceed such summary punishment as is allowed by this Act, or imprisonment; and

- (c.) A sentence of death or penal servitude awarded by a summary court-martial shall not be carried into effect unless and until it has been confirmed by the general or field officer commanding the force with which the prisoner is present at the date of his sentence.

**56.** (1.) A prisoner charged before a court-martial with stealing may be found guilty of embezzlement or of fraudulently misapplying money or property.

(2.) A prisoner charged before a court-martial with embezzlement may be found guilty of stealing or fraudulently misapplying money or property.

(3.) A prisoner charged before a court-martial with desertion may be found guilty of attempting to desert or of being absent without leave.

(4.) A prisoner charged before a court-martial with attempting to desert may be found guilty of desertion or of being absent without leave.

(5.) A prisoner charged before a court-martial with any other offence under this Act may, on failure of proof of an offence being committed under circumstances involving a higher degree of punishment, be found guilty of the same offence as being committed under circumstances involving a less degree of punishment.

#### EXECUTION OF SENTENCE.

**57.** (1.) The confirming authority may, when confirming the sentence of any court-martial, mitigate or remit the punishment thereby awarded, or commute such punishment for any less punishment or punishments to which the offender might have been sentenced by the said court-martial. The confirming authority may also suspend for such time as seems expedient the execution of a sentence.

(2.) When a sentence passed by a court-martial has been confirmed, the following authorities shall have power to mitigate or remit the punishment thereby awarded, or to commute such punishment for any less punishment or punishments to which the offender might have been sentenced by the said court-martial; that is to say,

(a.) As respects persons undergoing sentence in any place whatever, Her Majesty or the Commander-in-Chief or the officer commanding the district or station where the prisoner subject to such punishment may for the time be, or any prescribed officer; and

(b.) As respects persons undergoing sentences in India, the Commander-in-Chief of the forces in India, also as respects persons undergoing sentences in any presidency, the Commander-in-Chief of the forces in that presidency; and

(c.) As respects persons undergoing sentences in any colony, the officer commanding the forces in that colony; and

(d.) As respects persons undergoing sentences in any place not in the United Kingdom, India, or a colony, the officer commanding the forces in such place:

3. Provided that the power given by this section shall not be exercised by an officer holding a command inferior to that of the authority confirming the sentence, unless such officer is authorized by such confirming authority or other superior military authority to exercise such power.



4. An authority having power under this section to mitigate, remit, or commute any punishment may, if it seem fit, do all or any of those things in respect of a person subject to such punishment.

5. The provisions of this Act with respect to an original sentence of penal servitude or imprisonment shall apply to a sentence of penal servitude or imprisonment imposed by way of commutation.

**58.** When a person subject to military law is convicted by a court-martial, whether in the United Kingdom or elsewhere, either within or without Her Majesty's dominions, and is sentenced to penal servitude, such conviction and sentence shall be of the same effect as if such person (in this Act referred to as a military convict) had been convicted in the United Kingdom of an offence punishable by penal servitude and sentenced to penal servitude by a competent civil court, and all enactments relating to a person sentenced to penal servitude by a competent civil court shall, so far as circumstances admit, apply accordingly.

**59.** (1.) Where a sentence of penal servitude is passed by a court-martial in the United Kingdom, the military convict on whom such sentence has been passed shall, as soon as practicable, be transferred to a penal servitude prison to undergo his sentence according to law, and until so transferred shall be kept in military custody.

(2.) The order of the committing authority (hereafter in this section mentioned) shall be a sufficient warrant for his transfer to a penal servitude prison.

(3.) At any time before his arrival at a penal servitude prison, the discharging authority (hereafter in this section mentioned) may by order discharge the military convict.

(4.) Any one or more of the following officers shall be the committing authority for the purposes of this section, namely,—

- (a.) The Commander-in-Chief,
- (b.) The Adjutant-General,
- (c.) The commanding officer of the military convict, and
- (d.) Any other prescribed officer.

(5.) Any one of the following officers shall be the discharging authority for the purposes of this section, namely,—

- (a.) The Commander-in-Chief,
- (b.) The Adjutant-General, and
- (c.) Any other prescribed officer.

**60.** (1.) Where a sentence of penal servitude is passed by a court-martial in India or any colony, the military convict on whom such sentence has been passed shall, as soon as practicable, be transferred to a penal servitude prison to undergo his sentence according to law.

(2.) The order of the committing authority (hereafter in this section mentioned) shall be a sufficient warrant for his transfer to a penal servitude prison.

(3.) The military convict during the period which intervenes between the passing of his sentence and his arrival at the penal servitude prison (in this section referred to as the term of his intermediate custody) shall be deemed to be in legal custody.

(4.) The military convict during his term of intermediate custody

may be kept in military custody or in civil custody, or partly in one description of custody and partly in the other, and may from time to time be transferred from military custody to civil custody and from civil custody to military custody as occasion may require, and may, during his conveyance from place to place, or when on board ship or otherwise, be subjected to such restraint as is necessary for his detention and removal.

(5.) "Civil custody," for the purposes of this section, means custody in any authorized prison; nevertheless, where it is not practicable to place the military convict in an authorized prison, he may, by way of civil custody, be confined temporarily in any other prison with the assent of the authority having jurisdiction over that prison.

(6.) The military convict whilst in any prison in which he may legally be placed may be dealt with, in respect of hard labour and otherwise, according to the rules of that prison.

(7.) An order of the removing authority (hereafter in this section mentioned) shall be a sufficient authority for the transfer of the military convict from military custody to civil custody and from civil custody to military custody, and his removal from place to place, and for his detention in civil custody, and generally for dealing with such convict in such manner as may be thought expedient during the term of his intermediate custody.

(8.) The removing authority during the term of the intermediate custody of the military convict may from time to time by order provide for his being brought before a court-martial, or any civil court, either as a witness or for trial or otherwise, and an order of such authority shall be a sufficient warrant for the delivering him into military custody, and detaining him in custody until he can be returned, and for returning him to the place from whence he is brought, or to such other place as may be determined by the removing authority.

(9.) Any directions of the removing authority relating to the mode in which the military convict is to be dealt with during the term of his intermediate custody may be contained in the same order or in several orders; and if the orders are more than one, they may be by different officers and at different times.

(10.) At any time before the military convict arrives at a penal servitude prison the discharging authority (hereafter in this section mentioned) may by order discharge the military convict.

(11.) Any one or more of the following officers shall be the committing authority for the purposes of this section; that is to say,

(a.) In India—

(i.) The Commander-in-Chief of the forces in India;

(ii.) The Commander-in-Chief of the forces in any presidency in India;

(iii.) The Adjutant-General in India;

(iv.) The Adjutant-General in any presidency in India; and

(b.) In a colony, the officer commanding the forces in that colony; and

(c.) In any case, whether in India or in a colony, the prescribed officer.

(12.) Any one or more of the following officers shall be the removing authority for the purposes of this section; that is to say,

(a.) Any officer in this section named as the committing authority; also

(b.) The officer commanding the military district or station where the military convict may for the time being be; also

(c.) Any other prescribed officer.

(13.) Any of the following officers shall be the discharging authority for the purposes of this section; that is to say,

(a.) The officer who confirmed the sentence; also

(b.) Any officer in this section named as the committing authority; also

(c.) Any other prescribed officer.

**61.** (1.) Where a sentence of penal servitude is passed by a court-martial in any foreign country, the military convict on whom such sentence has been passed shall as soon as practicable be transferred to a penal servitude prison for the purpose of undergoing his sentence according to law, and, until so transferred, may be kept in military custody.

(2.) The order of the committing authority (hereafter in this section mentioned) shall be a sufficient warrant for the transfer of the military convict to a penal servitude prison.

(3.) If at any time before his arrival in the United Kingdom the military convict is brought into India or any colony, he may be dealt with by the competent military authority in India or such colony in the same manner in all respects as if he had been there sentenced by court-martial to penal servitude.

(4.) The military convict may at any time before he arrives at any place in the United Kingdom, India, or any colony, be discharged by the discharging authority (hereafter in this section mentioned) having jurisdiction in any place where the military convict may for the time being be.

(5.) Any one or more of the following officers shall be the committing authority for the purposes of this section; that is to say,

(a.) The officer commanding the army or force with which the military convict was serving at the time of his being sentenced;

(b.) The officer who confirmed the sentence of the court;

(c.) Any other prescribed officer.

(6.) Any committing authority under this section shall also be the discharging authority for the purposes of this section.

**62.** (1.) A penal servitude prison for the purposes of the provisions of this Act relating to penal servitude means any prison or place in which a prisoner sentenced to penal servitude by a civil court in the United Kingdom can for the time being be confined, either permanently or temporarily.

(2.) An "authorized prison" for the purposes of the provisions of this Act relating to penal servitude means any prison in India or any colony which the Governor-General of India or the governor of such colony may, with the concurrence of a Secretary of State, have appointed as a prison in which military convicts may, during the period of their intermediate custody, be confined.

(3.) After a military convict has arrived at the penal servitude prison to undergo his sentence, he shall be dealt with in the like manner as an ordinary civil prisoner under sentence of penal servitude.

**63.** (1.) Where a sentence of imprisonment is passed by court-martial or a commanding officer, the person on whom such sentence has been passed (in the provisions of this Act relating to imprisonment referred to as a military prisoner) shall undergo the term of his imprison-

ment either in military custody or in a public prison, or partly in one way and partly in the other.

(2.) The order of the committing authority hereafter mentioned shall be a sufficient warrant for the transfer of a military prisoner to a public prison.

(3.) A military prisoner while in a public prison shall be confined, kept to hard labour, and otherwise dealt with in the like manner as an ordinary prisoner under a like sentence of imprisonment.

(4.) A military prisoner during his conveyance from place to place, or when on board ship or otherwise, may be subjected to such restraint as is necessary for his detention and removal.

(5.) The discharging authority hereafter mentioned may, at any time during the period of a military prisoner undergoing his imprisonment, by order discharge the prisoner.

(6.) The committing authority or any other prescribed authority may at any time by order remove a military prisoner from one public prison to another, so that he be not removed from a prison in the United Kingdom to a prison elsewhere.

(7.) The removing authority hereafter mentioned may, at any time during the period of the military prisoner undergoing his sentence in a public prison, from time to time by order, provide for his being brought before a court-martial, or any civil court, either as a witness, or for trial or otherwise, and an order of such authority shall be a sufficient warrant for delivering him into military custody and detaining him in custody until he can be returned and for returning him to the place from whence he is brought, or to such other place as may be determined by the removing authority.

**64.** Where a sentence of imprisonment is passed or is being undergone in the United Kingdom, then for the purposes of the provisions of this Act relating to imprisonment—

(1.) The expression "public prison" means any prison in the United Kingdom in which offenders sentenced by a civil court to imprisonment can for the time being be confined :

(2.) Any one or more of the following officers shall be the committing authority :

- (a.) The Commander-in-Chief ;
- (b.) The Adjutant-General ;
- (c.) The officer who confirmed the sentence ;
- (d.) The commanding officer of the military prisoner ; and
- (e.) Any other prescribed officer :

(3.) Any one of the following officers shall be the discharging authority :

- (a.) The Commander-in-Chief ;
- (b.) The Adjutant-General ;
- (c.) The officer commanding the military district in which the prisoner may be ;
- (d.) The officer who confirmed the sentence ;
- (e.) Any other prescribed officer ; also,
- (f.) Where the sentence was passed by the commanding officer, the commanding officer :

(4.) Any one or more of the following officers shall be the removing authority :

- (a.) The Commander-in-Chief;
- (b.) The Adjutant-General;
- (c.) The officer commanding the military district in which the prisoner may be;
- (d.) Any other prescribed officer; also,
- (e.) Where the sentence was passed by the commanding officer, the commanding officer.

**65.** Where a sentence of imprisonment is passed or being undergone in India or any colony, then, for the purposes of the provisions of this Act relating to imprisonment—

- (1.) The expression "public prison" means any of the following prisons; that is to say—
  - (a.) where the sentence was passed in India, any authorized prison in India;
  - (b.) where the sentence was passed in a colony, any authorized prison in that colony;
  - (c.) any such authorized prison in any part of Her Majesty's dominions other than that in which the sentence was passed as may be prescribed; and
  - (d.) any public prison in the United Kingdom as above defined for the purpose of the provisions of this Act relating to imprisonment in the United Kingdom;
- (2.) "Authorized prison" means any prison in India or any colony which the Governor-General of India or the governor of such colony, with the concurrence of the Secretary of State, may have appointed as a prison in which military prisoners may be confined:
- (3.) A military prisoner may temporarily be confined in a prison not a public prison, with the assent of the authority having jurisdiction over such prison. And a military prisoner who is to undergo his sentence in the United Kingdom until he reaches a prison in the United Kingdom, in which he is to undergo his sentence, may be kept in military custody or in civil custody, and partly in one description of custody and partly in the other, and may from time to time be transferred from military custody to civil custody, and from civil custody to military custody, as occasion may require:
- (4.) Any one or more of the following officers shall be the committing authority; that is to say,
  - (a.) In India—
    - (i.) The Commander-in-Chief of the forces in India;
    - (ii.) The Commander-in-Chief of the forces in any presidency in India;
    - (iii.) The Adjutant-General in India; and
    - (iv.) The Adjutant-General in any presidency in India;
  - (b.) In a colony, the officer commanding the forces in that colony; and
  - (c.) In any case, whether in India or in a colony—
    - (i.) The officer who confirmed the sentence;
    - (ii.) The commanding officer of the military prisoner; and
    - (iii.) Any other prescribed officer;
- (5.) Any of the following officers shall be the discharging authority:
  - (a.) The officer commanding the military district or station in which the prisoner may be;

- (b.) Any officer in this section named as a committing authority, with this exception, that the commanding officer shall only be a discharging authority where the sentence was passed by a commanding officer; and
  - (c.) Any other prescribed officer:
- (6.) Any one or more of the following officers shall be the removing authority:
- (a.) Any officer in this section named as a committing authority;
  - (b.) The officer commanding the military district or station where the prisoner may be, and
  - (c.) Any other prescribed officer.

**66.** Where a sentence of imprisonment is passed by a court-martial or commanding officer in any foreign country, then if and as soon as the military prisoner on whom such sentence has been passed is brought into the United Kingdom or India, or any colony, the provisions of this Act shall apply in the same manner in all respects as if the sentence of imprisonment had been passed in the United Kingdom, India, or any colony, as the case may be, with this addition, that the officer commanding the army or force to which the military prisoner belonged at the time of his being sentenced shall also be deemed to be a committing authority.

**67. (1.)** The competent military authority (hereafter in this section mentioned) may give directions for the delivery into military custody of any military prisoner for the time being undergoing his sentence of imprisonment, and the removal of such prisoner, whether with his corps or separately, to any place beyond the seas where the corps, or any part thereof, to which for the time being he belongs, is serving or under orders to serve.

(2.) The directions of such competent military authority, or an order of the removing authority issued in pursuance of such directions, shall be sufficient authority for the removal of such prisoner from the prison in which he is confined, and for his conveyance in military custody to any place designated, and for his intermediate custody during such removal and conveyance.

(3.) The competent military authority may further give directions for the discharge of the prisoner either conditionally or unconditionally at any time while he is in military custody under this section.

(4.) For the purposes of this section any one or more of the following officers shall be the competent military authority:

- (a.) In the United Kingdom—
  - (i.) The Commander-in-Chief;
  - (ii.) The Adjutant-General; and
  - (iii.) Any other prescribed officer:
- (b.) In India—
  - (i.) The Commander-in-Chief of the forces in India;
  - (ii.) The Commander-in-Chief of the forces in any presidency in India;
  - (iii.) The Adjutant-General in India; and
  - (iv.) The Adjutant-General in any presidency in India;
- (c.) In a colony, the officer commanding the forces in that colony; and
- (d.) In any case, whether in India or in a colony, the prescribed officer.

**68.** (1.) The term of penal servitude or imprisonment to which a person is sentenced by a court-martial, whether the sentence has been revised or not, and whether the prisoner is already undergoing sentence or not, shall be reckoned to commence on the day on which the original sentence and proceedings were signed by the president of the court-martial.

(2.) An offender under this Act shall not be subject to imprisonment for more than two consecutive years, whether under one or more sentences.

#### MISCELLANEOUS.

##### *Articles of War and Rules of Procedure.*

**69.** It shall be lawful for Her Majesty to make Articles of War for the better government of officers and soldiers, and such Articles shall be judicially taken notice of by all judges and in all courts whatsoever: Provided that no person shall, by such Articles of War, be subject to suffer any punishment extending to life or limb, or to be kept in penal servitude, except for crimes which are by this Act expressly made liable to such punishment as aforesaid, or be subject, with reference to any crimes made punishable by this Act, to be punished in any manner which does not accord with the provisions of this Act.

**70.** (1.) Subject to the provisions of this Act Her Majesty may, by rules to be signified under the hand of a Secretary of State, from time to time make, and when made repeal, alter, or add to, provisions in respect of the following matters or any of them; that is to say,

- (a.) The assembly and procedure of courts of inquiry;
- (b.) The convening and constituting of courts-martial;
- (c.) The adjournment, dissolution, and sittings of courts-martial;
- (d.) The procedure to be observed in trials by courts-martial;
- (e.) The confirmation and revision of the findings and sentences of courts-martial;
- (f.) The carrying into effect sentences of courts-martial;
- (g.) The forms of orders to be made under the provisions of this Act relating to courts-martial, penal servitude, or imprisonment;
- (h.) Any matter in this Act directed to be prescribed;
- (i.) Any other matter or thing expedient or necessary for the purpose of carrying this Act into execution so far as relates to the investigation, trial, and punishment of offences triable or punishable by military law:

(2.) Provided always, that no such rules shall contain anything contrary to or inconsistent with the provisions of this Act.

(3.) All rules made in pursuance of this section shall be judicially noticed.

(4.) All rules made in pursuance of this section shall be laid before Parliament as soon as practicable after they are made, if Parliament be then sitting, and if Parliament be not then sitting, as soon as practicable after the beginning of the then next session of Parliament.

##### *Command.*

**71.** (1.) For the purpose of removing doubts as to the powers of command vested or to be vested in officers and others belonging to Her

Majesty's forces, it is hereby declared that Her Majesty may, in such manner as to Her Majesty may from time to time seem meet, make regulations as to the persons to be invested as officers, or otherwise, with command over Her Majesty's forces, or any part thereof, or any person belonging thereto, and as to the mode in which such command is to be exercised; provided that command shall not be given to any person over a person superior in rank to himself.

(2.) Nothing in this section shall be deemed to be in derogation of any power otherwise vested in Her Majesty.

*Inquiry as to and Confession of Desertion.*

**72.** (1.) When any soldier has been absent without leave from his duty for a period of twenty-one days, a court of inquiry may as soon as practicable be assembled, and inquire in the prescribed manner on oath or solemn declaration (which such court is hereby authorized to administer) respecting the fact of such absence, and the deficiency (if any) in the arms, ammunition, equipments, instruments, regimental necessities or clothing of the soldier, and if satisfied of the fact of such soldier having absented himself without leave or other sufficient cause, the court shall declare such absence and the period thereof, and the said deficiency, if any, and the commanding officer of the absent soldier shall enter in the regimental books a record of the declaration of such court.

(2.) If the absent soldier does not afterwards surrender or is not apprehended, such record shall have the legal effect of a conviction by court-martial for desertion.

**73.** (1.) Where a soldier signs a confession that he has been guilty of desertion or of fraudulent enlistment, a competent military authority may, by the order dispensing with his trial by a court-martial, or by any subsequent order, award the same forfeitures and the same deductions from pay (if any) as a court-martial could award for the said offence, or as are consequential upon conviction by a court-martial for the said offence, except such of them as may be mentioned in the order.

(2.) If upon any such confession, evidence of the truth or falsehood of such confession cannot then be conveniently obtained, the record of such confession, countersigned by the commanding officer of the soldier, shall be entered in the regimental books, and such soldier shall continue to do duty in the corps in which he may then be serving, or in any other corps to which he may be transferred, until he is discharged or transferred to the reserve, or until legal proof can be obtained of the truth or falsehood of such confession.

(3.) The competent military authority for the purposes of this section means the Commander-in-Chief or Adjutant-General, or, in the case of India, the Commander-in-Chief of the forces in India, or the Commander-in-Chief of the forces of any presidency in India, and in the case of a colony and elsewhere the general or other officer commanding the forces, subject in the case of India, or a colony, or elsewhere, to any directions given by the Commander-in-Chief.

*Provost Marshal.*

**74.** (1.) For the prompt repression of all offences which may be committed abroad, provost marshals with assistants may from time to



time be appointed by the general order of the general officer commanding a body of forces.

(2.) A provost marshal or his assistants may at any time arrest and detain for trial persons subject to military law committing offences and may also carry into execution any punishments to be inflicted in pursuance of a court-martial, but shall not inflict any punishment of his or their own authority.

#### *Restitution of Stolen Property.*

**75.** (1.) Where a person has been convicted by court-martial of having stolen, embezzled, received, knowing it to be stolen, or otherwise unlawfully obtained, any property, and the property or any part thereof is found in the possession of the offender, the authority confirming the finding and sentence of such court-martial, or the Commander-in-Chief, may order the property so found to be restored to the person appearing to be the lawful owner thereof.

(2.) A like order may be made with respect to any property found in the possession of such offender, which appears to the confirming authority or Commander-in-Chief to have been obtained by the conversion or exchange of any of the property stolen, embezzled, received, or unlawfully obtained.

(3.) Moreover where it appears to the confirming authority or Commander-in-Chief from the evidence given before the court-martial, that any part of the property stolen, embezzled, received, or unlawfully obtained was sold to or pawned with any person without any guilty knowledge on the part of the person purchasing or taking in pawn the property, the authority or Commander-in-Chief may, on the application of that person, and on the restitution of the said property to the owner thereof, order that out of the money (if any) found in the possession of the offender, a sum not exceeding the amount of the proceeds of the said sale or pawning shall be paid to the said person purchasing or taking in pawn.

(4.) An order under this section shall not bar the right of any person, other than the offender, or any one claiming through him, to recover any property or money delivered or paid in pursuance of an order under this section from the person to whom the same is so delivered or paid.

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## **Part II.—Enlistment.**

### *Period of Service.*

**76.** A person may be enlisted to serve Her Majesty as a soldier of the regular forces for a period of twelve years, or for such less period as may be from time to time fixed by Her Majesty, but not for any longer period, and the period for which a person enlists is in this Act referred to as the term of his original enlistment.

**77.** The original enlistment of a person under this Act shall be as follows, either—

(1.) For the whole of the term of his original enlistment in army service; or

- (2.) For such portion of the term of his original enlistment as may be from time to time fixed by a Secretary of State, and specified in the attestation paper, in army service, and for the residue of the said term in the reserve.

**78.** (1.) A Secretary of State may from time to time, by general or special regulations, vary the conditions of service, so as to permit a soldier of the regular forces in army service, with his assent, either—

- (a.) To enter the reserve at once for the residue unexpired of the term of his original enlistment; or
- (b.) To extend his army service for all or any part of the residue unexpired of such term; or
- (c.) To extend the term of his original enlistment up to the period of twelve years.

(2.) A Secretary of State may from time to time, by general or special regulations, vary the conditions of service so as to permit a man in the reserve, with his assent, to re-enter upon army service for all or any part of the residue unexpired of the term of his original enlistment, or for any period of time not exceeding twelve years in the whole from the date of his original enlistment.

**79.** In reckoning the service of a soldier of the regular forces for the purpose of discharge or of transfer to the reserve—

- (1.) The service shall begin to reckon from the date of his attestation; but
- (2.) Where a soldier of the regular forces has been guilty of any of the following offences:
  - (a.) Desertion from Her Majesty's service, or
  - (b.) Fraudulent enlistment,

then either upon his conviction by court-martial of the offence, or (if, having confessed the offence, he is liable to be tried) upon his trial being dispensed with by order of the competent military authority, the whole of his prior service shall be forfeited, and he shall be liable to serve as a soldier of the regular forces for the term of his original enlistment, reckoned from the date of such conviction or such order dispensing with trial, in like manner as if he had been originally attested at that date:

Provided that a Secretary of State may restore all or any part of the service forfeited under this section to any soldier who may perform good and faithful service, or may otherwise be deemed by such Secretary of State to merit such restoration of service, or may be recommended for such restoration of service by a court-martial.

#### *Proceedings for Enlistment.*

**80.** (1.) Every person authorized to enlist recruits in the regular forces (in this Act referred to as the "recruiter") shall give to every person offering to enlist a notice in the form for the time being authorized by a Secretary of State, stating the general requirements of attestation and the general conditions of the contract to be entered into by the recruit, and directing such person to appear before a justice of the peace at the time and place therein mentioned.

(2.) Upon the appearance before a justice of the peace of a person offering to enlist, the justice shall ask him whether he assents to be

enlisted, and shall not proceed with the enlistment if he considers the recruit under the influence of liquor.

(3.) If he does not appear before a justice, or on appearing does not assent to be enlisted, no further proceedings shall be taken.

(4.) If he assents to be enlisted—

(a.) The justice, after cautioning such person that if he makes any false answer to the questions read to him he will be liable to be punished as provided by this Act, shall read or cause to be read to him the questions set forth in the attestation paper for the time being authorized by a Secretary of State, and shall take care that such person understands each question so read, and after ascertaining that the answer of such person to each question has been duly recorded opposite the same in the attestation paper, shall require him to make and sign the declaration as to the truth of those answers set forth in the said paper, and shall then administer to him the oath of allegiance contained in the said paper:

(b.) Upon signing the declaration and taking the oath, such person shall be deemed to be enlisted as a soldier of Her Majesty's regular forces:

(c.) The justice shall attest by his signature, in manner required by the said paper, the fulfillment of the requirements as to attesting a recruit, and shall deliver the attestation paper, duly dated, to the recruiter:

(d.) The fee for the attestation of a recruit, and for all acts and things incidental thereto, shall be one shilling and no more, and shall be paid to the clerk of the justice:

(e.) The officer who finally approves of a recruit for service shall, at his request, furnish him with a certified copy of his attestation paper.

(5.) The date at which the recruit signs the declaration and takes the oath in this section in that behalf mentioned shall be deemed to be the date of the attestation of such recruit.

(6.) The competent military authority, if satisfied that there is any error in the attestation paper of a recruit, may cause the recruit to attend before some justice of the peace, and that justice, if satisfied that such error exists, and is not so material as to render it just that the recruit should be discharged, may amend the error in the attestation paper, and the paper as amended shall thereupon be deemed as valid as if the matter of the amendment had formed part of the original matter of such paper.

(7.) Where the regulations of a Secretary of State under this part of this Act require duplicate attestation papers to be signed and attested, this section shall apply to both such duplicates, and in the event of any amendment of an attestation paper the amendment shall be made in both of the duplicate attestation papers.

**81.** If a recruit within three months after the date of his attestation pays for the use of Her Majesty a sum not exceeding ten pounds, he shall be discharged with all convenient speed, unless he claims such discharge during a period when soldiers in army service who otherwise would be transferred to the reserve are required by a proclamation of Her Majesty in pursuance of this Act to continue in army service, in which case he may be retained in Her Majesty's service during that pe-

riod, and at the termination thereof shall, if he so require it, on the payment then of the said sum, be discharged.

*Appointment to Corps and Transfers.*

**82.** (1.) Recruits may, in pursuance of any general or special regulations from time to time made by a Secretary of State, be enlisted for service in particular corps of the regular forces, but save as is provided by such regulations, if any, recruits shall be enlisted for general service.

(2.) The competent military authority shall as soon as practicable appoint a recruit, if enlisted for service in a particular corps, to that corps, and if enlisted for general service, to some corps of the regular forces.

**83.** A soldier of the regular forces, whether enlisted for general service or not, when once appointed to a corps, shall serve in that corps for the period of his army service, whether during the term of his original enlistment or during the period of such re-engagement as is in this Act mentioned, unless transferred under the following provisions :

(1.) A soldier of the regular forces enlisted for general service may within three months after the date of his attestation be transferred to any corps of the regular forces of the same arm or branch of the service by order of the competent military authority.

(1.) A soldier of the regular forces may at any time with his own consent be transferred by order of the competent military authority to any corps of the regular forces.

(3.) Where a soldier of the regular forces is in pursuance of any of the foregoing provisions transferred to a corps in an arm or branch different from that in which he was previously serving, the competent military authority may by order vary the conditions of his service so as to correspond with the general conditions of service in the arm or branch to which he is transferred.

(4.) A soldier of the regular forces in any branch of the service may be transferred by order of the competent military authority to any corps of the same branch which is serving in the United Kingdom in either of the following cases :

(a.) When he has been invalided from service beyond the seas ; or

(b.) When, in the case of his corps or the part thereof in which he is serving being ordered on service beyond the seas, he is either unfit for such service by reason of his health, or is within two years from the end either of the period of his army service in the term of his original enlistment, or of such re-engagement as is in this Act mentioned.

(5.) Where a soldier of the regular forces in any branch of the service, who was enlisted to serve part of the term of his original enlistment in the reserve, and has not extended his army service for the whole of that time, is on service beyond the seas, and at the time of his corps or the part thereof in which he is serving being ordered to another station or to return home, has more than two years of his army service in the term of his original enlistment unexpired, he may be transferred by order of the competent military authority to any corps of the same branch which or a part of which is on service beyond the seas.

(6.) Where a soldier of the regular forces has been transferred to serve, either as a warrant officer not holding an honorary commission, or in the corps of armoured sergeants, or in the army hospital corps, or in the army service corps, or on the staff, or in the corps of mounted military police, or in any corps not being a corps of infantry, cavalry, artillery, or engineers, he may by order of the competent military authority, either during the term of his original enlistment or during the period of his re-engagement, be removed from such service and transferred to any corps of the regular forces serving in the United Kingdom, or to any corps of the regular forces serving on the station beyond the seas on which he is serving at the time of his removal, or to the corps of the regular forces in which he was serving prior to such first-mentioned transfer either in the rank he holds at the time of his removal or any lower rank.

(7.) Where a soldier of the regular forces—

(a.) Has been guilty of the offence of desertion from Her Majesty's service or of fraudulent enlistment, and has either been convicted of the same by a court-martial, or, having confessed the offence, is liable to be tried, but his trial has been dispensed with by order of the competent military authority; or

(b.) Has been sentenced by a court-martial for any offence to a punishment not less than imprisonment for a term of six months, such soldier shall be liable, in commutation wholly or partly of other punishment, to general service, and may from time to time be transferred to such corps of the regular forces as the competent military authority may from time to time order.

(8.) A soldier of the regular forces delivered into military custody or committed by a court of summary jurisdiction in any part of Her Majesty's dominions as a deserter shall be liable to be transferred by order of the competent military authority to any corps of the regular forces near to the place where he is delivered or committed, or to any other corps to which the competent military authority think it desirable to transfer him, and to serve in the corps to which he is so transferred without prejudice to his subsequent trial and punishment.

#### *Re-engagement and Prolongation of Service.*

84. (1.) Subject to any general or special regulations from time to time made by a Secretary of State, a soldier of the regular forces if in army service and within three years of the completion of his original term of enlistment may on the recommendation of his commanding officer, and with the approval of the competent military authority, be re-engaged for such further period of army service as will make up a total continuous period of twenty-one years of army service, reckoned from the date of his attestation, and inclusive of any period previously served in the reserve.

(2.) A soldier of the regular forces during his period of re-engagement shall be liable to forfeit his previous service during such period of re-engagement in like manner as he is liable under this part of this Act during the term of his original enlistment.

(3.) A soldier of the regular forces who so re-engages shall make before his commanding officer a declaration in accordance with the said regulations.

**85.** A soldier of the regular forces who has completed, or will within one year complete, a total period of twenty-one years service, inclusive of any period served in the reserve, may give notice to his commanding officer of his desire to continue in Her Majesty's service in the regular forces; and if the competent military authority approve he may be continued as a soldier of the regular forces in the same manner in all respects as if his term of service were still unexpired, except that he may claim his discharge at the expiration of any period of three months after he has given notice to his commanding officer of his wish to be discharged.

**86.** The regulations from time to time made in pursuance of this part of this Act may, if it seems expedient, provide that a non-commissioned officer of the regular forces who extends his army service for the residue unexpired of his original term of enlistment shall have the right at his option to re-engage, under section eighty-four, and to continue his service, under section eighty-five of this Act, or to do either of such things, subject, nevertheless, to the veto of the Secretary of State or other authority mentioned in the regulations, and to such other conditions as are specified in the regulations.

**87.** (1.) Where the time at which a soldier of the regular forces would otherwise be entitled to be discharged occurs while a state of war exists between Her Majesty and any foreign power, or while such soldier is on service beyond the seas, or while soldiers in the reserve are required by a proclamation, in pursuance of the enactments relating to the calling out of the reserve on permanent service, to continue in or re-enter upon army service, the soldier may be detained, and his service may be prolonged for such further period, not exceeding twelve months, as the competent military authority may order; but at the expiration of that period, or any earlier period at which the competent military authority considers his services can be dispensed with, the soldier shall, as provided by this Act, be discharged with all convenient speed.

(2.) Where the time at which a soldier of the regular forces would otherwise be entitled to be transferred to the reserve occurs while a state of war exists between Her Majesty and any foreign power, the soldier may be detained in army service for such further period, not exceeding twelve months, as the competent military authority may order, but at the expiration of that period, or any earlier period at which the competent military authority considers his services can be dispensed with, the soldier shall with all convenient speed be sent to the United Kingdom for the purpose of being transferred to the reserve.

(3.) If a soldier required under this section to be discharged or sent to the United Kingdom desires, while a state of war exists between Her Majesty and any foreign power, to continue in Her Majesty's service, and the competent military authority approve, he may agree to continue as a soldier of the regular forces in the same manner in all respects as if his term of service were still unexpired, except that he may claim his discharge at the end of such state of war, or, if it is so provided by such agreement, at the expiration of any period of three months after he has given notice to his commanding officer of his wish to be discharged.

(4.) A soldier who so agrees to continue shall make before his commanding officer a declaration in accordance with any general or special regulations from time to time made by a Secretary of State.

**88.** (1.) It shall be lawful for Her Majesty in Council, in case of imminent national danger or of great emergency, by proclamation, the occasion being first communicated to Parliament if Parliament be then sitting, or if Parliament be not then sitting declared by the proclamation, to order that the soldiers who would otherwise be entitled in pursuance of the terms of their enlistment to be transferred to the reserve shall continue in army service.

(2.) It shall be lawful for Her Majesty by any such proclamation to order a Secretary of State from time to time to give, and when given to revoke or vary, such directions as may seem necessary or proper for causing all or any of the soldiers mentioned in the proclamation to continue in army service.

(3.) Every soldier for the time being required by or in pursuance of such directions to continue in army service shall continue to serve in army service for the same period for which he might be required to serve, if he had been transferred to the reserve and called out for permanent service by a proclamation of Her Majesty under the enactments relating to the reserve.

(4.) Any man who has entered the reserve in pursuance of the terms of his enlistment may be called out for permanent service by a proclamation of Her Majesty under the enactments relating to the calling out of the reserve on permanent service.

*Discharge and Transfer to Reserve Force.*

**89.** In the following cases; that is to say,

(1.) Where a soldier of the regular forces has been invalided from service beyond the seas; or

(2.) Where a corps to which a soldier of the regular forces belongs, or the part thereof in which he is serving, is ordered on service beyond the seas, and the soldier is either unfit for such service by reason of his health, or is within two years of the end of the period of his army service in the term of his original enlistment,

the competent military authority may by order transfer him to the reserve in like manner as if the period of his actual service were specified in his attestation paper as the portion of the term of his original enlistment which was to be spent in army service.

**90.** (1.) Save as otherwise provided by this Act or the Acts relating to the reserve forces, every soldier of the regular forces upon the completion of the term of his original enlistment, or of the period of his re-engagement, shall be discharged with all convenient speed, but until so discharged shall be subject to this Act as a soldier of the regular forces.

(2.) Where a soldier of the regular forces enlisted in the United Kingdom is, when entitled to be discharged, serving beyond the seas, he shall, if he so requires, be sent to the United Kingdom, and in such case shall, with all convenient speed, be sent there free of expense, and on his arrival be discharged. If such soldier is permitted, at his request, to stay at the place where he is serving, he shall not afterwards have any claim to be sent at the public expense to the United Kingdom or elsewhere.

(3.) Every soldier of the regular forces upon the completion of the period of his army service, if shorter than the term of his original enlist-

ment, shall be transferred to the reserve, but until so transferred shall be subject to this Act as a soldier of the regular forces.

(4.) Where a soldier of the regular forces, when entitled to be transferred to the reserve, is serving beyond the seas, he shall be sent to the United Kingdom free of expense with all convenient speed, and on his arrival shall be transferred to the reserve.

(5.) A soldier of the regular forces who is discharged on the completion of the term of his original enlistment or his re-engagement as mentioned in the second sub-section of this section, or is transferred to the reserve, shall be entitled to be conveyed free of cost from the place in the United Kingdom where he is discharged or transferred to the place in which he appears from his attestation paper to have been attested, or to any place at which he may at the time of his discharge or transfer decide to take up his residence, and to which he can be conveyed without greater cost.

**91.** (1.) A Secretary of State may, if he think proper, on account of a soldier's lunacy, cause any soldier of the regular forces on his discharge, and his wife and child, or any of them, to be sent to the parish or union to which under the statutes for the time being in force he appears, from the statements made in his attestation paper and other available information, to be chargeable; and such soldier, wife, or child, if delivered after reasonable notice, in England or Ireland at the workhouse in which persons settled in such parish or union are received, and in Scotland to the inspector of poor of such parish, shall be received by the master or other proper officer of such workhouse or such inspector of poor, as the case may be:

(2.) Provided that a Secretary of State, where it appears to him that any such soldier is a dangerous lunatic, and is in such a state of health as not to be liable to suffer bodily or mental injury by his removal may, by order signified under his hand or under the hand of an under secretary, send such lunatic direct to an asylum, registered hospital, licensed house, or other place in which pauper lunatics can legally be confined, and for the purpose of the said order the above-mentioned parish or union shall be deemed to be the parish or union from which such lunatic is sent.

(3.) In England the lunatic shall be sent to the asylum, hospital, house, or place to which a person in the workhouse aforesaid, on becoming a dangerous lunatic, can by law be removed, and an order of the Secretary of State under this section shall be of the same effect as an order by a justice within the meaning of section seventy-two of the Act of the session of the sixteenth and seventeenth years of the reign of Her present Majesty, chapter ninety-seven, intitled "An Act to consolidate and amend the laws for the provision and regulation of lunatic asylums for counties and boroughs, and for the maintenance and care of pauper lunatics in England," and shall be subject accordingly to the provisions of that section.

(4.) The Secretary of State, before making the said order in respect of a lunatic who is liable to be delivered to the inspector of poor of a parish in Scotland, may require the inspector of poor of that parish to specify the asylum to which such lunatic if in the parish would be sent, and it shall be the duty of such inspector forthwith to specify such asylum, and thereupon the Secretary of State may make the said order



for sending the lunatic to that asylum, and such order shall be of the same effect as an order by the sheriff within the meaning of section eighty-five of the Act of the session of the twentieth and twenty-first years of the reign of Her present Majesty, chapter seventy-one, intituled "An Act for the regulation of, and care and treatment of lunatics, and for the provision, maintenance, and regulation of lunatic asylums in Scotland," and shall be subject accordingly to the provisions of that section.

(5.) In the case of any such lunatic, who is liable to be delivered at a workhouse in Ireland, at which persons settled in the said union are received, a Secretary of State may, by order under his hand, send such soldier to the asylum of the district in which such union is situate, and such order shall be of the same effect as a warrant under the hands and seals of two justices given under the provisions of the tenth section of the Act of the session of the thirtieth and thirty-first years of the reign of Her present Majesty, chapter one hundred and eighteen, intituled "An Act to provide for the appointment of the officers and servants of district lunatic asylums in Ireland, and to alter and amend the law relating to the custody of dangerous lunatics and dangerous idiots in Ireland."

**92.** (1.) A soldier of the regular forces shall not be discharged from those forces, unless by sentence of court-martial with ignominy, or by order of the competent military authority, or by authority direct from Her Majesty, and until duly discharged in manner provided by this Act and by regulations of the Secretary of State under this Act shall be subject to this Act.

(2.) To every soldier of the regular forces who is discharged, for whatever reason he is discharged, there shall be given a certificate of discharge, stating his service, conduct, and character, and the cause of his discharge.

*Authorities to enlist and attest Recruits.*

**93.** A Secretary of State may from time to time make, and when made revoke and alter, a general or special order making such regulations, giving such directions, and issuing such forms as he may think necessary or expedient respecting the persons authorized to enlist recruits for Her Majesty's regular forces, and for the purpose of such enlistment, and generally for carrying this part of this Act into effect; and any such order shall be of the same effect as if enacted in this Act.

**94.** (1.) For the purposes of the attestation of soldiers in pursuance of this part of this Act—

An officer in the United Kingdom or elsewhere, if authorized in that behalf under the regulations of a Secretary of State, also every person exercising the office of a magistrate in India or a colony, and also each of the following persons, shall have the authority of a justice of the peace, and be deemed to be included in the expression "justice of the peace" wherever used in this part of this Act in relation to the attestation of soldiers; that is to say,

In India, any person duly authorized in that behalf by the Governor General; and in the territories of any native state in India, the person performing the duties of the office of British

resident or political agent therein, or any other person authorized in that behalf by the Governor General of India; and  
 In a colony, any person duly authorized in that behalf by the governor of the colony; and  
 Beyond the limits of the United Kingdom, India, and a colony, any British consul general, consul, or vice-consul, or person duly exercising the authority of a British consul.

*Special Provisions as to Persons to be Enlisted.*

**95.** (1.) Any person who is for the time being an alien may, if Her Majesty think fit to signify her consent through a Secretary of State, be enlisted in Her Majesty's regular forces, so however that the number of aliens serving together at any one time in any corps of the regular forces shall not exceed the proportion of one alien to every fifty British subjects, and that an alien so enlisted shall not be capable of holding any higher rank in Her Majesty's regular forces than that of a warrant officer or non-commissioned officer:

(2.) Provided that notwithstanding the above provisions of this section any negro or person of colour, although an alien, may voluntarily enlist in pursuance of this part of this Act, and when so enlisted shall while serving in Her Majesty's regular forces be deemed to be entitled to all the privileges of a natural-born British subject.

**96.** The master of an apprentice in the United Kingdom who has been attested as a soldier of the regular forces may claim him while under the age of twenty-one years as follows, and not otherwise:

(1.) The master, within one month after the apprentice left his service, must take before a justice of the peace the oath in that behalf specified in the First Schedule to this Act, and obtain from the justice a certificate of having taken such oath, which certificate the justice shall give in the form in the said schedule, or to the like effect:

(2.) A court of summary jurisdiction within whose jurisdiction the apprentice may be, if satisfied on complaint by the master that he is entitled to have the apprentice delivered up to him, may order the officer under whose command the apprentice is to deliver him to the master, but if satisfied that the apprentice stated on his attestation that he was not an apprentice may, and if required by or on behalf of the said commanding officer shall, try the apprentice for the offence of making such false statement, and if need be may adjourn the case for the purpose:

(3.) Except in pursuance of an order of a court of summary jurisdiction, an apprentice shall not be taken from Her Majesty's service:

(4.) An apprentice shall not be claimed in pursuance of this section unless he was bound for at least four years by a regular indenture, and was under the age of sixteen years when so bound:

(5.) A master who gives up the indenture of his apprentice within one month after the attestation of such apprentice shall be entitled to receive to his own use so much of the bounty (if any) payable to such apprentice on enlistment as has not been paid to the apprentice before notice was given of his being an apprentice.

**97.** The provisions of this part of this Act with respect to apprentices shall apply to a person who at the time of his attestation is an in-

dentured labourer in a colony, with these qualifications, that such indentured labourer, if imported at the expense of the employer or of the colony in consideration of the indenture under which he is serving, may be claimed although above the age of twenty-one years, and though bound for a less period or at an older age than is *above* specified.

*Offences as to Enlistment.*

**98.** If a person without due authority—

- (1.) Publishes or causes to be published notices or advertisements for the purpose of procuring recruits for Her Majesty's regular forces, or in relation to recruits for such forces; or
- (2.) Opens or keeps any house, place of rendezvous, or office as connected with the recruiting of such forces; or
- (3.) Receives any person under any such advertisement as aforesaid; or
- (4.) Directly or indirectly interferes with the recruiting service of such forces,

he shall be liable on summary conviction to a fine not exceeding twenty pounds.

**99.** (1.) If a person knowingly makes a false answer to any question contained in the attestation paper, which has been put to him by or by direction of the justice before whom he appears for the purpose of being attested, he shall be liable on summary conviction to be imprisoned with or without hard labour for any period not exceeding three months.

(2.) If a person guilty of an offence under this section has been attested as a soldier of the regular forces, he shall be liable, at the discretion of the competent military authority, to be proceeded against before a court of summary jurisdiction, or to be tried by court-martial for the offence.

*Miscellaneous as to Enlistment.*

**100.** (1.) Where a person after his attestation on his enlistment, or the making of his declaration on re-engagement, has received pay as a soldier of the regular forces during three months, he shall be deemed to have been duly attested and enlisted or duly re-engaged, as the case may be, and shall not be entitled to claim his discharge on the ground of any error or illegality in his enlistment, attestation, or re-engagement, or on any other ground whatsoever, save as authorized by this Act, and, if within the said three months such person claims his discharge, any such error or illegality or other ground shall not until such person is discharged in pursuance of his claim affect his position as a soldier in Her Majesty's service, or invalidate any proceedings, act, or thing taken or done prior to such discharge.

(2.) Where a person is in pay as a soldier in any corps of Her Majesty's regular forces, such person shall be deemed for all the purposes of this Act to be a soldier of the regular forces, with this qualification, that he may at any time claim his discharge, but until he so claims and is discharged in pursuance of that claim he shall be subject to this Act as a soldier of the regular forces legally enlisted and duly attested under this Act.

(3.) Where a person claims his discharge on the ground that he has not been attested or re-engaged, or not duly attested or re-engaged, his commanding officer shall forthwith forward such claim to the competent military authority, who shall as soon as practicable submit it to a Secretary of State, and if the claim appears well grounded the claimant shall be discharged with all convenient speed.

**101.** (1.) Any act or thing authorized or required by this part of this Act to be done by, to, or before the competent military authority may be done by, to, or before the commander-in-chief or the adjutant general, or any officer prescribed in that behalf.

(2.) For the purposes of this part of this Act the expression "reserve" means the first class of the army reserve force.

### **Part III.—Billeting and Impressment of Carriages.**

#### *Billeting of Officers and Soldiers.*

**102.** During the continuance in force of this Act, so much of any law as prohibits, restricts, or regulates the quartering or billeting of officers and soldiers on any inhabitant of this realm without his consent is hereby suspended, so far as such quartering or billeting is authorized by this Act.

**103.** (1.) Every constable for the time being in charge at any place in the United Kingdom mentioned in the route issued to the commanding officer of any portion of Her Majesty's regular forces shall, on the demand of such commanding officer, or of an officer or soldier authorized by him, and on production of such route, billet on the occupiers of victualling houses and other premises specified in this Act as victualling houses in that place such number of officers, soldiers, and horses entitled under this Act to be billeted as are mentioned in the route and stated to require quarters.

(2.) A route for the purposes of this part of this Act shall be issued under the authority of Her Majesty, signified through a Secretary of State, and shall state the forces to be moved in pursuance of the route, and that statement shall be signed by such officer as the commander-in-chief may from time to time order in that behalf.

(3.) A route purporting to be issued and signed as required by this section shall be evidence until the contrary is proved of its having been duly issued and signed in pursuance of this Act, and if delivered to an officer or soldier by his commanding officer shall be a sufficient authority to such officer or soldier to demand billets, and when produced by an officer or soldier to a constable shall be conclusive evidence to such constable of the authority of the officer or soldier producing the same to demand billets in accordance with such route.

**104.** (1.) The provisions of this part of this Act with respect to victualling houses shall extend to all inns, hotels, livery stables, or ale-houses, also to the houses of sellers of wine by retail, whether British or foreign, to be drunk in their own houses or places thereunto belonging, and to all houses of persons selling brandy, spirits, strong waters, cider, or metheglin by retail; and the occupier of a victualling house,

inn, hotel, livery stable, alehouse, or any such house as aforesaid shall be subject to billets under this Act, and is in this Act included under the expression "keeper of a victualling house," and the inn, hotel, house, stables, and premises of such occupier are in this Act included under the expression "victualling house."

(2.) Provided that an officer or soldier shall not be billeted—

(a.) In any private house ; nor

(b.) In any canteen held or occupied under the authority of a Secretary of State ; nor

(c.) On persons who keep taverns only, being vintners of the City of London admitted to their freedom of the said company in right of patrimony or apprenticeship, notwithstanding the persons who keep such taverns have taken out licenses for the sale of any intoxicating liquor ; nor

(d.) In the house of any distiller kept for distilling brandy and strong waters, so as such distiller does not permit tipping in such house ; nor

(e.) In the house of any shopkeeper whose principal dealing is more in other goods and merchandise than in brandy and strong waters, so as such shopkeeper does not permit tipping in such house ; nor

(f.) In a house of a person licensed only to sell beer or cider not to be consumed on the premises ; nor

(g.) In the house of residence of any foreign consul duly accredited as such.

**105.** (1.) All officers and soldiers of Her Majesty's regular forces ; and

(2.) All horses belonging to Her Majesty's regular forces ; and

(3.) All horses belonging to the officers of such forces for which forage is for the time being allowed by Her Majesty's regulations, shall be entitled to be billeted.

**106.** (1.) The keeper of a victualling house upon whom any officer, soldier, or horse is billeted shall receive such officer, soldier, or horse in his victualling house, and furnish there the accommodation following ; that is to say, lodging and attendance for the officer ; and lodging, attendance, and food for the soldier ; and stable room and forage for the horse, in accordance with the provisions of the Second Schedule to this Act.

(2.) Where the keeper of a victualling house on whom any officer, soldier, or horse is billeted desires, by reason of his want of accommodation or of his victualling house being full or otherwise, to be relieved from the liability to receive such officer, soldier, or horse in his victualling house, and provides for such officer, soldier, or horse in the immediate neighborhood such good and sufficient accommodation as he is required by this Act to provide, and as is approved by the constable issuing the billets, he shall be relieved from providing the same in his victualling house.

(3.) There shall be paid to the keeper of a victualling house for the accommodation furnished by him in pursuance of this Act the prices for the time being authorized in this behalf by Parliament.

(4.) An officer or soldier demanding billets in pursuance of this Act shall, before he departs, and if he remains longer than four days, at

least once in every four days, pay the just demands of every keeper of a victualling house on whom he and any officers and soldiers under his command, and his or their horses (if any) have been billeted.

(5.) If by reason of a sudden order to march, or otherwise, an officer or soldier is not able to make such payment to any keeper of a victualling house as is above required, he shall before he departs make up with such keeper of a victualling house an account of the amount due to him, and sign the same, and forthwith transmit the account so signed to a Secretary of State, who shall forthwith cause the amount named in such account as due to be paid.

**107.** (1.) The police authority for any place may cause annually a list to be made out of all keepers of victualling houses within the meaning of this Act in such place, or any particular part thereof, liable to billets under this Act, specifying the situation and character of each victualling house, and the number of soldiers and horses who may be billeted on the keeper thereof.

(2.) The police authority shall cause such list to be kept at some convenient place open for inspection at all reasonable times by persons interested, and any person who feels aggrieved either by being entered in such list, or by being entered to receive an undue proportion of officers, soldiers, or horses, may complain to a court of summary jurisdiction, and the court, after such notice as the court think necessary to persons interested, may order the list to be amended in such manner as the court may think just.

**108.** The following regulations shall be observed with respect to billeting in pursuance of this Act; that is to say,

- (1.) No more billets shall at any time be ordered than there are effective officers, soldiers, and horses present to be billeted:
- (2.) All billets, when made out by the constable, shall be delivered into the hands of the commanding officer or non-commissioned officer who demanded the billets, or of some officer authorized by such commanding officer:
- (3.) If a keeper of a victualling house feels aggrieved by having an undue proportion of officers, soldiers, or horses billeted on him, he may apply to a justice of the peace, or if the billets have been made out by a justice may complain to a court of summary jurisdiction, and the justice or court may order such of the officers, soldiers, or horses to be removed and to be billeted elsewhere as may seem just:
- (4.) A constable having authority in a place mentioned in the route may act for the purposes of billeting in any locality within one mile from such place, unless some constable ordinarily having authority in such locality is present and undertakes to billet therein the due proportion of officers, soldiers, and horses:
- (5.) The regulations with respect to billets contained in the Second Schedule to this Act shall be duly observed by the constable:
- (6.) A justice of the peace, on the request of an officer or non-commissioned officer authorized to demand billets, may vary a route by adding any place or omitting any place, and also may direct billets to be given above one mile from a place mentioned in the route.
- (7.) A justice of the peace may require a constable to give an account

in writing of the number of officers, soldiers, and horses billeted by such constable, together with the names of the keepers of victualling houses on whom such officers, soldiers, and horses are billeted, and the locality of such victualling houses.

*Offences in Relation to Billeting.*

**109.** If a constable commits any of the offences following; that is to say,

- (1.) Billets any officer, soldier, or horse, or any person not liable to billets without the consent of such person; or
- (2.) Receives, demands, or agrees for any money or reward whatsoever to excuse or relieve a person from being entered in a list as liable or from his liability to billets, or from any part of such liability; or
- (3.) Billets or quarters on any person or premises, without the consent of such person or the occupier of such premises, any person or horse not entitled to be billeted; or
- (4.) Neglects or refuses after sufficient notice is given to give billets demanded for any officer, soldier, or horse entitled to be billeted;

he shall, on summary conviction, be liable to a fine of not less than forty shillings and not exceeding ten pounds.

**110.** If a keeper of a victualling house commits any of the offences following; that is to say,

- (1.) Refuses or neglects to receive any officer, soldier, or horse billeted upon him in pursuance of this Act, or to furnish such accommodation as is required by this Act; or
- (2.) Gives or agrees to give any money or reward to a constable to excuse or relieve him from being entered in a list as liable or from his liability to billets, or any part of such liability; or
- (3.) Gives or agrees to give to any officer or soldier billeted upon him in pursuance of this Act any money or reward in lieu of receiving an officer, soldier, or horse, or furnishing the said accommodation;

he shall, on summary conviction, be liable to a fine of not less than forty shillings and not exceeding five pounds.

**111.** (1.) If any officer quarters or causes to be billeted any officer, soldier, or horse otherwise than is allowed by this Act upon any person he shall be guilty of a misdemeanor.

(2.) If any officer or soldier commits any offence in relation to billeting for which he is liable to be punished under Part One of this Act, other than an offence in respect of which any other remedy is given by this part of this Act to the person aggrieved, he shall, upon summary conviction, be liable to a fine not exceeding fifty pounds.

(3.) A certificate of a conviction for an offence under this section shall be transmitted by the court making such conviction to a Secretary of State.

*Impressment of Carriages.*

**112.** (1.) Every justice of the peace in the United Kingdom having jurisdiction in any place mentioned in a route issued to the commanding officer of any portion of Her Majesty's regular forces shall, on the de-

mand of such commanding officer, or of an officer or non-commissioned officer authorized by him, and on production of such route, issue his warrant requiring some constable or constables having authority in such place to provide, within a reasonable time to be named in the warrant, such carriages, animals, and drivers as are stated to be required for the purpose of moving the regimental baggage and regimental stores of the forces mentioned in the route in accordance with the route; and the constable or constables shall execute such warrant, and persons having carriages and animals suitable for the said purpose shall, when ordered by a constable in pursuance of such warrant, furnish the same in a state fit for use for the aforesaid purpose.

(2.) The route for the purpose of this section shall be such route as is mentioned in the foregoing provisions of this part of this Act with respect to billeting.

(3.) A route purporting to be issued and signed as required by those provisions, if delivered to an officer or non-commissioned officer by his commanding officer, shall be a sufficient authority to such officer or non-commissioned officer to demand carriages and animals in pursuance of this Act, and when produced by an officer or non-commissioned officer shall be conclusive evidence to a justice and constable of the authority of the officer or non-commissioned officer producing the same to demand carriages and animals in accordance with such route.

(4.) The warrant ordering carriages, animals and drivers to be provided shall specify the number and description of the carriages, and also the places from and to which the same are to travel, and the distances between such places.

(5.) When sufficient carriages or animals cannot be procured within the jurisdiction of the said justice, any justice having jurisdiction in the next adjoining place shall, by a like course of proceeding, supply the deficiency.

(6.) A fee of one shilling and no more shall be paid for the warrant by the officer or non-commissioned officer applying for the same and shall be paid to the clerk of the justice.

**113.** (1.) There shall be paid in respect of the carriages and animals furnished in pursuance of this part of this Act the rates specified in the Third Schedule to this Act, and the regulations contained in that schedule with respect to the carriages and animals furnished shall be duly observed.

(2.) The following authorities; that is to say,

(a.) In England the court of general or quarter sessions of a county or

of a borough subject to the Municipal Corporations Act, 1835; and

(b.) In Scotland, the commissioners of supply of a county, or the magistrates of a Royal or Parliamentary burgh; and

(c.) In Ireland the grand jury for a county, a county of a city, a county of a town and city, or a city or town and county, also any council of any such county, town or city, having by law the fiscal powers of a grand jury,

may from time to time, as respects places within their jurisdiction, by order increase the rates authorized in the said schedule by such amount in respect of each rate, not exceeding one third, as may seem reasonable, and the amount of such increase shall be notified in writing by the justice



granting a warrant in pursuance of this Act to the person demanding the warrant.

(3.) The order shall specify the average price of hay and oats at the nearest market town at the time of fixing such increased rates, and the order shall not be in force for more than ten days beyond the next meeting of such authority, but may be renewed from time to time by a fresh order or orders, and while in force shall have effect as part of the said schedule.

(4.) A copy of every such order, duly authenticated, shall be transmitted to a Secretary of State within three days after the making thereof.

(5.) The officer or non-commissioned officer who demands carriages or animals in pursuance of this part of this Act shall pay the sums due in respect of the same to the owners or drivers of the carriages or animals, and one third part of such payment shall in each case, if required, be made before the carriage is loaded; and such payments shall be made, if required, in the presence of a justice or constable.

(6.) If an officer or non-commissioned officer is from any cause unable to pay the amount due to the owner or driver of any carriage or animal, he shall make up with such owner or driver and sign an account of the amount due to him, and forthwith transmit the account so signed to a Secretary of State, who shall forthwith cause the amount named therein to be paid to such owner or driver.

**114.** (1.) The police authority for any place may cause annually a list to be made out of all persons in such place, or any particular part thereof, liable to furnish carriages and animals under this Act, and of the number and description of the carriages and animals of such persons; and where a list is so made, any justice may by warrant require any constable or constables having authority within such place to give from time to time, on demand by an officer or non-commissioned officer under this Act, orders to furnish carriages and animals, and such warrant shall be executed as if it were a special warrant issued in pursuance of this Act on such demand, and the orders shall specify the like particulars as such special warrant.

(2.) The police authority shall cause such list to be kept at some convenient place open for inspection at all reasonable times by persons interested, and any person who feels aggrieved either by being entered in such list, or by being entered to furnish any number or description of carriages or animals which he is not liable to furnish, may complain to a court of summary jurisdiction, and the court, after such notice as the court think necessary to persons interested, may order the list to be amended in such manner as the court may think just.

(3.) All orders given by constables for furnishing carriages and animals shall, as far as possible, be made from such list in regular rotation.

**115.** (1.) Her Majesty by order, distinctly stating that a case of emergency exists, and signified by a Secretary of State, and also in Ireland the Lord Lieutenant by a like order, signified by the Chief Secretary or Under Secretary, may authorize any general or field officer commanding Her Majesty's regular forces in any military district or place in the United Kingdom to issue a requisition under this section (hereinafter referred to as a requisition of emergency.)

(2.) The officer so authorized may issue a requisition of emergency

under his hand, reciting the said order, and requiring justices of the peace to issue their warrants for the provision, for the purpose mentioned in the requisition, of such carriages and animals as may be provided under the foregoing provisions, and also of carriages of every description, and of horses of every description, whether kept for saddle or draught, and also of vessels (whether boats, barges, or other) used for the transport of any commodities whatsoever upon any canal or navigable river.

(3.) A justice of the peace, on demand by an officer of the portion of Her Majesty's forces mentioned in a requisition of emergency, or by an officer of a Secretary of State authorized in this behalf, and on production of the requisition, shall issue his warrant for the provision of such carriages, animals, and vessels as are stated by the officer producing the requisition of emergency to be required for the purpose mentioned in the requisition; the warrant shall be executed in the like manner, and all the provisions of this Act as to the provision or furnishing of carriages and animals, including those respecting fines on officers, non-commissioned officers, justices, constables, or owners of carriages or animals, shall apply in like manner as in the case where a justice issues, in pursuance of the foregoing provisions of this Act, a warrant for the provision of carriages and animals, and shall apply to vessels as if the expression carriages included vessels.

(4.) A Secretary of State shall cause due payment to be made for carriages, animals, and vessels furnished in pursuance of this section, and any difference respecting the amount of payment for any carriage, animal, or vessel shall be determined by a county court judge having jurisdiction in any place in which such carriage, animal, or vessel was furnished or through which it travelled in pursuance of the requisition.

(5.) Canal, river, or lock tolls are hereby declared not to be demandable for vessels while employed in any service in pursuance of this section or returning therefrom. And any toll collector who demands or receives toll in contravention of this exemption shall, on summary conviction, be liable to a fine not exceeding five pounds nor less than ten shillings.

(6.) A requisition of emergency, purporting to be issued in pursuance of this section and to be signed by an officer therein stated to be authorized in accordance with this section, shall be evidence until the contrary is proved, of its being duly issued and signed in pursuance of this Act, and if delivered to an officer of Her Majesty's forces or of a Secretary of State shall be a sufficient authority to such officer to demand carriages, animals, and vessels in pursuance of this section, and when produced by such officer shall be conclusive evidence to a justice and constable of the authority of such officer to demand carriages, animals, and vessels in accordance with such requisition; and it shall be lawful to convey on such carriages, animals, and vessels, not only the baggage, provisions, and military stores of the troops mentioned in the requisition of emergency, but also the officer, soldiers, servants, women, children, and other persons of and belonging to the same.

*Offences in Relation to the Impressment of Carriages.*

**116.** Any constable who—

- (1.) Neglects or refuses to execute any warrant of a justice requiring him to provide carriages, animals, or vessels; or

- (2.) Receives, demands, or agrees for any money or reward whatsoever to excuse or relieve any person from being entered in a list as liable to furnish, or from being required to furnish, or from furnishing any carriage, animal, or vessel; or
- (3.) Orders any carriage, animal, or vessel to be furnished for any person or purpose or on any occasion for and on which it is not required by this Act to be furnished,

shall, on summary conviction, be liable to a fine of not less than twenty shillings nor more than twenty pounds.

**117.** A person ordered by any constable in pursuance of this Act to furnish a carriage, animal, or vessel who—

- (1.) Refuses or neglects to furnish the same according to the orders of such constable and this Act; or
- (2.) Gives or agrees to give to a constable or to any officer or non-commissioned officer any money or reward whatsoever to be excused from being entered in a list as liable to furnish, or from being required to furnish, or from furnishing, or in lieu of furnishing, any carriage, animal, or vessel in pursuance of this Act; or
- (3.) Does any act or thing by which the execution of any warrant or order for providing or furnishing carriages, animals, or vessels is hindered,

shall, on summary conviction, be liable to pay a fine of not less than forty shillings nor more than ten pounds.

**118.** (1.) Any officer or soldier who commits any offence in relation to the impressment of carriages for which he is liable to be punished under Part One of this Act, other than an offence in respect of which any other remedy is given by this part of this Act to the person aggrieved, shall, on summary conviction, be liable to a fine not exceeding fifty pounds nor less than forty shillings.

(2.) A certificate of a conviction for an offence under this section shall be transmitted by the court making such conviction to a Secretary of State.

*Supplemental Provisions as to Billeting and Impressment of Carriages.*

**119.** (1.) The following persons; that is to say,

- (a.) If any officer or soldier fails to comply with the provisions of this part of this Act with respect to the payment of a sum due to a keeper of a victualling house or in respect of carriages or animals, or to the making up of an account of the sum due, the person to whom the sum is due; or
- (b.) If a keeper of a victualling house suffers any ill-treatment by violence, extortion, or making disturbance in billets from any officer or soldier billeted upon him, or if the owner or driver of any carriage, animal, or vessel furnished in pursuance of this part of this Act suffers any ill-treatment from any officer or soldier, the person suffering such ill-treatment, but, when there is an officer commanding such officer or soldier present at the place only after first making due complaint, if practicable to such commanding officer,

may apply to a court of summary jurisdiction, and such court, if satisfied on oath of such failure or such ill-treatment, and of the amount fairly

due to the applicant, including the costs of his application to the court of summary jurisdiction, shall certify the same to a Secretary of State, who shall forthwith cause the amount due to be paid.

(2.) Provided that the Secretary of State, if it appear to him that the amount named in such certificate is not justly due, or is in excess of the amount justly due, may direct a complaint to be made to a court of summary jurisdiction for the county, borough, or place for which the court giving the certificate acted, and the court after hearing the case may by order confirm the said certificate, or vary it in such manner as to the court seems just.

**120.** (1.) A constable shall observe the directions given to him for the due execution of this part of this Act by the police authority; and the police authority, or any member thereof, and every justice of the peace may, if it seem necessary, and in the absence of a constable shall, themselves or himself exercise the powers and perform the duties by this part of this Act vested in or imposed on a constable, and in such case every such person is in this part of this Act included in the expression "constable."

(2.) A person having or executing any military office or commission in any part of the United Kingdom shall not, directly or indirectly, be concerned, as a justice or constable, in the billeting of or appointing quarters for any officer or soldier or horse of the corps, or part of a corps, under his immediate command, and all warrants, acts, and things made, done, and appointed by such person for or concerning the same shall be void.

**121.** If any person—

(1.) Forges or counterfeits any route or requisition of emergency, or knowingly produces to a justice or constable any route or requisition of emergency so forged or counterfeited; or

(2.) Personates or represents himself to be an officer or soldier authorized to demand any billet, or any carriage, animal, or vessel, or to be entitled to be billeted, or to have his horse billeted; or

(3.) Produces to a justice or constable a route or requisition which he is not authorized to produce, or a document falsely purporting to be a route or requisition,

he shall be liable, on summary conviction, to imprisonment for a period not exceeding three months, with or without hard labour, or to a fine not less than twenty shillings and not more than five pounds.

#### **Part IV.—General Provisions.**

##### *Supplemental Provisions as to Courts-martial.*

**122.** (1.) Her Majesty may, subject to the provisions of this Act, by any warrant or warrants under Her Sign Manual, in such form as Her Majesty may from time to time direct, from time to time—

(a.) Convene or authorize any qualified officer to convene a general court-martial for the trial under this Act of any person subject to military law; and

(b.) Give a general authority to any qualified officer to convene gen-

eral courts-martial for the trial, under this Act, of such persons subject to military law as may for the time being be under or within the territorial limits of his command; and

(c.) Empower any qualified officer to delegate, to any officer under his command not below the degree of field officer, a general authority to convene general courts-martial for the trial, under this Act, of such persons subject to military law as are for the time being under or within the territorial limits of his command; and

(d.) Reserve for confirmation by Her Majesty, or empower any qualified officer to confirm, the findings and sentences of general courts-martial; and

(e.) Empower any officer for the time being authorized to confirm the findings and sentences of general courts-martial to reserve for confirmation findings or sentences of general courts-martial, or to delegate a power of confirming such findings or sentences to any officer under his command not below the degree of field officer; and

(f.) Revoke any warrant for the time being in force, or any part of any warrant, leaving the remainder in full force:

Provided that where it appears to Her Majesty that in any place out of the United Kingdom, where no field officer is for the time being in command, hardship would be inflicted on persons accused of offences by reason of there being no means of speedily trying such persons for offences, a warrant under this section may empower an officer to delegate to an officer not below the degree of captain any authority and power authorized under this section to be delegated to a field officer.

(2.) The same officer may or may not be appointed convening and confirming officer.

(3.) The power of convening general courts-martial, and of confirming the findings and sentences of general courts-martial, or either of such powers, may be granted subject to such restrictions, reservations, exceptions, and conditions as to Her Majesty may seem meet, and when delegated by any officer empowered in that behalf may, subject to the provisions of any warrant granting him such power, be delegated subject to such restrictions, reservations, exceptions, and conditions as to such officer may seem fit.

(4.) Warrants under this section may be addressed to officers by name or by designation of their offices, or partly in one way and partly in the other, and any warrant may or may not, according to the terms of such warrant and the mode in which the same is addressed, be limited to an officer named, or be extended to a person for the time being performing the duties of the office named, or be extended to the successors in command of an officer.

(5.) Any warrant of Her Majesty issued in pursuance of this section shall be of the same force as if the provisions thereof were enacted by this Act.

(6.) "Qualified officer" for the purposes of this Act, in so far as it relates to convening or confirming the findings and sentences of general courts-martial, means the Commander-in-Chief and any officer not below the rank of a field officer commanding for the time being any body of the regular forces either within or without Her Majesty's dominions; it also includes the Lord Lieutenant of Ireland, the Governor General of India, and a Governor of any colony on whom the command of any body of regular forces may be conferred by Her Majesty.

**123.** (1.) Any officer or person authorized to convene general courts-martial may—

- (a.) Convene a district court-martial for the trial under this Act of any person under his command who is subject to military law; and
  - (b.) Empower any person under his command not below the rank of captain to convene a district court-martial for the trial under this Act of any person under the command of such last-mentioned officer who is subject to military law; and
  - (c.) Confirm the finding and sentence of any district court-martial, or empower any officer whom he has power to authorize to convene district courts-martial to confirm the finding and sentence of any district court-martial.
- (2.) The same officer may or may not be appointed convening and confirming officer under this section.
- (3.) The power of convening, and of confirming the findings and sentences of, district courts-martial, or either of such powers, may be granted under this section, subject to such restrictions, reservations, exceptions, and conditions as to the officer granting such power may seem meet.
- (4.) Any authority under this section for convening district courts-martial may be addressed to an officer by name or by designation of his office, or partly in one way and partly in the other, and may or may not, according to the terms thereof and the mode in which the same is addressed, be limited to an officer named, or be extended to a person holding for the time being or performing the duties of the office, or be extended to the successors in command of such officer.

**124.** Any person tried by a court-martial shall be entitled on demand, at any time in the case of a general court-martial within seven years, and in the case of any other court-martial within three years after the confirmation of the finding and sentence of the court, to obtain from the officer or person having the custody of proceedings of such court a copy thereof, including the proceedings with respect to the revision and confirmation thereof, upon payment for the same at the prescribed rate, not exceeding twopence for every folio of seventy-two words, and for the purposes of this section the proceedings of courts-martial shall be preserved in the prescribed manner.

**125.** (1.) Every person required to give evidence before a court-martial may be summoned or ordered to attend in the prescribed manner.

(2.) Every person attending in pursuance of such summons or order as a witness before any court-martial shall, during his necessary attendance in or on such court, and in going to and returning from the same, have the same privilege from arrest as he would have if he were a witness before a superior court of civil jurisdiction.

**126.** (1.) Where any person who is not subject to military law commits any of the following offences; that is to say,

- (a.) On being duly summoned as a witness before a court-martial, and after payment or tender of the reasonable expenses of his attendance, makes default in attending; or
- (b.) Being in attendance as a witness—

- (i.) Refuses to take an oath legally required by a court-martial to be taken ; or
- (ii.) Refuses to produce any document in his power or control legally required by a court-martial to be produced by him ; or
- (iii.) Refuses to answer any question to which a court-martial may legally require an answer,

the president of the court-martial may certify the offence of such person under his hand to any court of law in the part of Her Majesty's dominions where the offence is committed which has power to punish witnesses if guilty of like offences in that court, and that court may thereupon inquire into such alleged offence, and after examination of any witnesses that may be produced against or for the person so accused, and after hearing any statement that may be offered in defence, if it seem just, punish such witness in like manner as if he had committed such offence in a proceeding in that court.

(2.) Where a person not subject to military law when examined on oath or solemn declaration before a court-martial wilfully gives false evidence, he shall be liable on indictment or information to be convicted of and punished for the offence of perjury, or the offence by whatever name called in the part of Her Majesty's dominions in which the offence is tried which, if committed in England, would be perjury.

(3.) Where a person not subject to military law is guilty of any contempt towards a court-martial, by using insulting or threatening language, or by causing any interruption or disturbance in its proceedings, or by printing observations or using words calculated to influence the members of or witnesses before such court, or to bring such court into disrepute, the president of the court-martial may certify the offence of such person, under his hand, to any court of law in the part of Her Majesty's dominions where the offence is committed which has power to commit for contempt, and that court may thereupon inquire into such alleged offence, and after hearing any witnesses that may be produced against or on behalf of the person so accused, and after hearing any statement that may be offered in defence, punish or take steps for the punishment of such person in like manner as if he had been guilty of contempt of that court.

**127.** A court-martial under this Act shall not, as respects the conduct of its proceedings, or the reception or rejection of evidence, or as respects any other matter or thing whatsoever, be subject to the provisions of the Indian Evidence Act, 1872, or to any Act, law, or ordinance of any legislature whatsoever other than the Parliament of the United Kingdom.

**128.** The rules of evidence to be adopted in proceedings before courts-martial shall be the same as those which are followed in civil courts in England, and no person shall be required to answer any question or to produce any document which he could not be required to answer or produce in similar proceedings before a civil court.

**129.** Whereas it is expedient to make provision respecting the conduct of counsel when appearing on behalf of the prosecution or defence at general courts-martial in pursuance of rules under this Act, be it therefore enacted as follows :

(1.) Any conduct of a counsel which would be liable to censure, or a contempt of court, if it took place before Her Majesty's High Court of Justice in England, shall likewise be deemed liable to censure, or a contempt of court, in the case of a court-martial; and the rules laid down for the practice of courts-martial and the guidance of counsel shall be binding on counsel appearing before such courts-martial, and any wilful disobedience of such rules shall be professional misconduct, and, if persevered in, be deemed a contempt of court.

(2.) Where a counsel is guilty of conduct liable to censure, or a contempt of court, such offence shall be deemed to be an offence within the meaning of section one hundred and twenty-six of this Act, and the president of the court-martial may certify the same to a court of law accordingly; and the court of law to which the same is certified shall deal with such offence in the same manner as if it had been committed in a proceeding before that court.

(3.) A court-martial may, by order under the hand of the president, cause a counsel to be removed from the court who is guilty of such an offence as may, in the opinion of the court-martial, require his removal from court, but in every such case the president shall certify the offence committed to a court of law in manner provided by the above-mentioned section.

**130.** (1.) Where it appears on the trial by court-martial of a person charged with an offence that such person is by reason of insanity unfit to take his trial, the court shall find specially that fact; and such person shall be kept in custody in the prescribed manner until the directions of Her Majesty thereon are known, or until any earlier time at which such person is fit to take his trial.

(2.) Where on the trial by court-martial of a person charged with an offence it appears that such person committed the offence, but that he was insane at the time of the commission thereof, the court shall find specially the fact of his insanity, and such person shall be kept in custody in the prescribed manner until the directions of Her Majesty thereon are known.

(3.) In either of the above cases Her Majesty may give orders for the safe custody of such person during her pleasure, in such place and in such manner as Her Majesty thinks fit.

(4.) A finding under this section shall be subject to confirmation in like manner as any other finding.

(5.) If a person imprisoned by virtue of this Act becomes insane, then, without prejudice to any other provision for dealing with such insane prisoner, a Secretary of State in any case, and in the case of a prisoner confined in India the Governor General of India, or the Governor of any presidency in which the person is confined, and in the case of a prisoner confined in a colony the Governor of that colony, may, upon a certificate of such insanity by two qualified medical practitioners, order the removal of such prisoner to an asylum or other proper place for the reception of insane persons in the United Kingdom, India, or the colony, according as the prisoner is confined in the United Kingdom, India, or the colony, there to remain for the unexpired term of his imprisonment, and, upon such person being certified in the like manner to be again of sound mind, may order his removal to any prison in which he might have been confined if he had not become insane, there to undergo the remainder of such punishment.



*General Provisions as to Prisons.*

**131.** (1.) A Secretary of State may from time to time make arrangements with the Governor General of India or the Governor of a colony for the reception in any prison in India or in such colony of prisoners under this Act, and of deserters or absentees without leave from Her Majesty's service, on payment of such sums as are provided by the arrangement, and the governor of any prison to which any such arrangement relates shall be under the same obligation as the governor of a prison in the United Kingdom to receive and detain such prisoners, deserters, and absentees without leave:

(2.) Provided that where a prisoner has been sentenced in India or in a colony to a term of imprisonment exceeding twelve months or to a term of penal servitude, he shall be transferred as soon as practicable to a prison or convict establishment within the United Kingdom, unless in the case of imprisonment the court shall for special reasons otherwise order, there to undergo his sentence; or unless he belongs to a class with respect to which a Secretary of State has declared that, by reason of the climate or place of his birth or the place of his enlistment, or otherwise, it is not beneficial to the prisoner to transfer him to the United Kingdom; every such declaration shall be laid before both Houses of Parliament.

(3.) Any order which can be made under this section by the court may be made by the confirming authority in confirming the finding and sentence, and in the case of any commutation or remission of sentence, may be made by the authority commuting or remitting the sentence.

**132.** (1.) The governor of every prison in the United Kingdom, and the governor of every prison in India or a colony who is under the same obligation as the governor of a prison in the United Kingdom, shall receive and confine, until discharged or delivered over in due course of law, all prisoners sent to such prison in pursuance of this Act, and every person delivered into his custody as a deserter or absentee without leave by any person conveying him under legal authority, on production of the warrant of a court of summary jurisdiction on which such deserter or absentee without leave has been taken or committed, or of some order from a Secretary of State, or from the Governor General of India, or the governor of a colony, which order shall continue in force until the deserter or absentee without leave has arrived at his destination.

(2.) Every such governor shall also receive into his custody for a period not exceeding seven days, any soldier in military custody upon delivery to him of a written order purporting to be signed by the commanding officer of such soldier.

(3.) The provisions of this section with respect to the governor of a prison in the United Kingdom shall apply to a person having charge of any police station or other place in which prisoners may legally be confined.

*Military Prisons.*

**133.** (1.) It shall be lawful for a Secretary of State, and in India for the Governor General, to set apart any building or part of a building under the control of the Secretary of State or Governor General as a military prison, or as a public prison for the imprisonment of military

prisoners, and to declare that any such building or part of a building shall be a military prison, or a public prison, as the case may be, and every military prison so declared shall be deemed to be a public prison within the meaning of the provisions of this Act relating to imprisonment, and if such prison is in India shall be deemed to be an authorized prison.

(2.) It shall be lawful for a Secretary of State, and in India for the Governor General, from time to time to make, alter, and repeal rules for the government, management and regulation of military prisons, and for the appointment and removal and powers of inspectors, visitors, governors, and officers thereof, and for the labour of military prisoners therein, and for the safe custody of such prisoners, and for the maintenance of discipline among them, and for the punishment by personal correction, not exceeding twenty-five lashes in the case of corporal punishment, restraint, or otherwise of offences committed by such prisoners, so, however, that such rules shall not authorize corporal punishment to be inflicted for any offence in addition to the offences for which such punishment can be inflicted in pursuance of the Prison Act, 1865, and the Prison Act, 1877, nor render the imprisonment more severe than it is under the law in force for the time being in any public prison in England, subject to the Prison Act, 1877, and provided that all the regulations in the Prison Act, 1865, and in the Prison Act, 1877, as to the duties of gaolers, medical officers, and coroners shall be contained in such rules, so far as the same can be made applicable.

(3.) On all occasions of death by violence or attended with suspicious circumstances in any military prison in India an inquest is to be held, to make inquiry into the cause of death. The commanding officer shall cause notice to be given to the nearest magistrate, duly authorized to hold inquests, and such magistrate shall hold an inquest into the cause of any such death, in the manner and with the powers provided in the case of similar inquiries held under the law for the time being in force in India for regulating criminal procedure.

(4.) Where from any cause there is no competent civil authority available, the commanding officer shall convene a court of inquest. Such court shall be convened and shall hold the inquest in such manner as may be prescribed.

(5.) Such rules may apply to such prisons any enactments of the Prison Act, 1865, imposing punishments on any persons not prisoners.

(6.) All rules made by a Secretary of State in pursuance of this section shall be laid before Parliament as soon as practicable after they are made, if Parliament be then sitting, and if not, as soon as practicable after the commencement of the then next session of Parliament.

**134.** (1.) No soldiers shall be confined, longer than is absolutely necessary, in prisons other than military prisons in India and colonies where the rules for the government and management of such prisons differ from those made by the Governor General of India and a Secretary of State in the case of India and the colonies respectively.

**135.** Whereas it is expedient that a clear difference should be made between the treatment of prisoners convicted of breaches of discipline and the treatment of prisoners convicted of offences of an immoral, dishonest, shameful, or criminal character, a Secretary of State shall

from time to time make rules for the classification and treatment of such prisoners.

*Pay.*

**136.** The pay of an officer or soldier of Her Majesty's regular forces shall be paid without any deduction other than the deductions authorized by this or any other Act or by any Royal Warrant for the time being.

**137.** The following penal deductions may be made from the ordinary pay due to an officer of the regular forces:

- (1.) All ordinary pay due to an officer who absents himself without leave or overstays the period for which leave of absence has been granted him, unless a satisfactory explanation has been given through the commanding officer of such officer, and has been notified as satisfactory by the Commander-in-Chief to a Secretary of State;
- (2.) The sum required to make good such compensation for any expenses, loss, damage, or destruction occasioned by the commission of any offence as may be awarded by the court-martial by whom he is convicted of such offence;
- (3.) The sum required to make good the pay of any officer or soldier which he has unlawfully retained or unlawfully refused to pay.

**138.** The following penal deductions may be made from the ordinary pay due to a soldier of the regular forces:

- (1.) All ordinary pay for every day of absence either on desertion or without leave, or as prisoner of war, and for every day of imprisonment either under sentence for an offence awarded by a civil court or court-martial, or by his commanding officer, or if he is on board one of Her Majesty's ships by the commanding officer of that ship, or under detention on the charge for an offence of which he is afterwards convicted by a civil court or court-martial, or under detention on the charge for absence without leave for which he is afterwards awarded imprisonment by his commanding officer;
- (2.) All ordinary pay for every day on which he is in hospital on account of sickness certified by the proper medical officer attending on him at the hospital to have been caused by an offence under this Act committed by him;
- (3.) The sum required to make good such compensation for any expenses, loss, damage, or destruction occasioned by the commission of any offence as may be awarded by the court-martial by whom he is convicted of such offence, or if he is on board of one of Her Majesty's ships by the commanding officer of that ship, or where he has confessed the offence and his trial is dispensed with by order under section seventy-three of this Act, as may be awarded by that order or by any other order of a competent military authority under that section;
- (4.) The sum required to make good such compensation for any expenses caused by him, or for any loss of or damage or destruction done by him to any arms, ammunition, equipment, clothing, instruments, or regimental necessities or military decoration, or to any buildings or property, as may be awarded by his commanding officer, or, in case he requires to be tried by a court-martial, by that court-martial, or if he is on board one of Her Majesty's ships, by the commanding officer of that ship;

- (5.) Where a soldier at the time of his enlistment belonged to any part of the auxiliary forces, the sum required to make good any compensation for which at the time of his enlistment he was under stoppage of pay as a member of the auxiliary forces, and any sum which he is liable to pay by reason of his quitting the said part of the auxiliary forces upon his enlistment;
- (6.) Where a soldier's liquor ration is stopped by his commanding officer on board any ship, whether commissioned by Her Majesty or not, the sum equivalent to such ration, whether previously drawn by the soldier or not, not exceeding one penny a day for twenty-eight days;
- (7.) The sum required to pay a fine awarded by a court-martial, his commanding officer, or a civil court; and
- (8.) The sum required to pay any sum ordered by a Secretary of State to be paid as mentioned in this Act for the maintenance of his wife or child, or of any bastard child, or towards the cost of any relief given by way of loan to his wife or child:

Provided that—

(a.) The total amount of deductions from the ordinary pay due to a soldier in respect of the sums required to pay any compensation, fine, or sum awarded or ordered to be paid as aforesaid by a court-martial, commanding officer, or Secretary of State shall not exceed such sum as will leave to the soldier, after paying for his messing and washing, less than one penny a day; and

(b.) A person shall not be subjected in respect of any compensation, fine, or sum awarded or ordered to be paid as aforesaid to any deductions greater than is sufficient to make good the expenses, loss, damage, or destruction for which such compensation is awarded, or to pay the said sum.

**139.** Any deduction of pay authorized by this Act may be remitted in such manner and by such authority as may be from time to time provided by Royal Warrant, and subject to the provisions of any such warrant may be remitted by the Secretary of State.

**140.** (1.) Any sum authorized by this Act to be deducted from the ordinary pay of an officer or soldier may, without prejudice to any other mode of recovering the same, be deducted from the ordinary pay or from any sums due to such officer or soldier, in such manner, and when deducted or recovered may be appropriated in such manner as may be from time to time directed by any regulation or order of the Secretary of State.

(2.) And any such regulation or order may from time to time declare what shall be deemed for the purposes of the provisions of this Act relating to deductions from pay to constitute a day of absence or a day of imprisonment, so, however, that no time shall be so reckoned as a day unless the absence or imprisonment has lasted for six hours or upwards, whether wholly in one day or partly in one day and partly in another, or unless such absence prevented the absentee from fulfilling any military duty which was thereby thrown upon some other person.

(3.) In cases of doubt as to the proper issue of pay or the proper deduction from pay due to any officer or soldier, the pay may be withheld until Her Majesty's order respecting it has been signified through a Secretary of State, which order shall be final.

**141.** Every assignment of, and every charge on, and every agreement to assign or charge any deferred pay, or military reward payable to any officer or soldier of any of Her Majesty's forces, or any pension, allowance, or relief payable to any such officer or soldier, or his widow, child, or other relative, or to any person in respect of any military service, shall, except so far as the same is made in pursuance of a Royal Warrant for the benefit of the family of the person entitled thereto, or as may be authorized by any Act for the time being in force, be void.

**142.** (1.) Where any regulations made by the Secretary of State or the Commissioners of Her Majesty's Treasury, with respect to the payment of any military reward, pension, or allowance, or any sum payable in respect of military service, or with respect to the payment of money or delivery of property in the possession of the military authorities, provide for proving, whether on oath or by statutory declaration, the identity of the recipient or any other matter in connexion with such payment, such oath may be administered and declaration taken by the persons specified in the regulations, and any person who in such oath or declaration wilfully makes any false statement shall be liable to the punishment of perjury.

(2.) Any person who falsely represents himself to any military, naval, or civil authority to belong to or to be a particular man in the regular reserve or auxiliary forces shall be deemed to be guilty of personation.

(3.) Any person who is guilty of an offence under the False Personation Act, 1874, in relation to any military pay, reward, pension, or allowance, or to any sum payable in respect of military service, or to any money or property in the possession of the military authorities, or is guilty of personation under this section, shall be liable, on summary conviction, to imprisonment, with or without hard labour, for a term not exceeding three months, or to a fine not exceeding twenty-five pounds.

(4.) Provided that nothing in this section shall prevent any person from being proceeded against and punished under any other enactment or at common law in respect of any offence, so that he be not punished twice for the same offence.

#### *Exemptions of Officers and Soldiers.*

**143.** (1.) All officers and soldiers of Her Majesty's regular forces on duty or on the march; and

Their horses and baggage; and

All prisoners under military escort; and

All carriages and horses belonging to Her Majesty or employed in her military service, when conveying any such persons as above in this section mentioned, or baggage or stores, or returning from conveying the same,

shall be exempted from payment of any duties or tolls on embarking or disembarking from or upon any pier, wharf, quay, or landing-place, or in passing along or over any turnpike or other road or bridge, otherwise demandable by virtue of any Act of Parliament already passed or hereafter to be passed, or by virtue of any Act, ordinance, order, or direction of the legislature or other authority in India or any colony:

Provided that nothing in this section shall exempt any boats, barges, or other vessels employed in conveying the said persons, horses, bag-

gage, or stores along any canal from payment of tolls in like manner as other boats, barges, and vessels.

(2.) When any soldiers have occasion in their march by route to pass regular ferries in Scotland, the officer commanding may, at his option, pass over with his soldiers as passengers, and shall pay for himself and each soldier one half only of the ordinary rate payable by single persons, or may hire the ferry boat for himself and his party, debarring others for that time, and shall in all such cases pay only half the ordinary rate for such boat.

(3.) Any person who demands and receives any duty, toll, or rate in contravention of this section shall, on summary conviction, be liable to a fine not exceeding five pounds nor less than ten shillings.

**144.** (1.) A soldier of Her Majesty's regular forces shall not be liable to be taken out of Her Majesty's service by any process, execution, or order of any court of law or otherwise, or to be compelled to appear in person before any court of law, except in respect of the following matters, or one of them; that is to say,

(a.) On account of a charge of or conviction for crime; or

(b.) On account of any debt, damages, or sum of money, when the amount exceeds thirty pounds over and above all costs of suit.

(2.) For the purposes of this section a crime shall mean a felony, misdemeanor, or other crime or offence punishable, according to the law in force in that part of Her Majesty's dominions in which such soldier is, with fine or imprisonment or some greater punishment, and shall not include the offence of a person absenting himself from his service, or neglecting to fulfill his contract, or otherwise misconducting himself respecting his contract.

(3.) For the purposes of this section a court of law shall be deemed to include a court of summary jurisdiction and any magistrate.

(4.) The amount of the debt, damages, or sum shall be proved for the purpose of any process issued before the court has adjudicated on the case by an affidavit of the person seeking to recover the same or of some one on his behalf, and such affidavit shall be sworn, without payment of any fee, in the manner in which affidavits are sworn in the court in which proceedings are taken for the recovery of the sum, and a memorandum of such affidavit shall, without fee, be endorsed upon any process or order issued against a soldier.

(5.) All proceedings and documents in or incidental to a process, execution, or order in contravention of this section shall be void; and where complaint is made by a soldier or his commanding officer that such soldier is dealt with in contravention of this section by any process, execution, or order issued out of any court, and is made to that court or to any court superior to it, the court or some judge thereof shall examine into the complaint, and shall, if necessary, discharge such soldier without fee, and may award reasonable costs to the complainant, which may be recovered as if costs had been awarded in his favour in any action or other proceeding in such court.

Provided that—

(1.) Any person having cause of action or suit against a soldier of the regular forces may, notwithstanding anything in this section, after due notice in writing given to the soldier, or left at his last quarters, proceed in such action or suit to judgment, and have execution

other than against the person, pay, arms, ammunition, equipments, regimental necessities, or clothing of such soldier; and

- (2.) This section shall not prevent such proceeding with respect to apprentices and indentured labourers as is authorized by this Act.

**145.** (1.) A soldier of the regular forces shall be liable to contribute to the maintenance of his wife and of his children, and also to the maintenance of any bastard child of which he may be proved to be the father, to the same extent as if he were not a soldier; but execution in respect of any such liability or of any order or decree in respect of such maintenance shall not issue against his person, pay, arms, ammunition, equipments, instruments, regimental necessities, or clothing; nor shall he be liable to be punished for the offence of deserting or neglecting to maintain his wife or family, or any member thereof, or of leaving her or them chargeable to any union, parish, or place.

(2.) When any order or decree is made under any Act or at common law for payment by a soldier of the regular forces either of the cost of the maintenance of his wife or child, or of any bastard child of whom he is the putative father, or of the cost of any relief given to his wife or child by way of loan, a copy of such order or decree shall be sent to a Secretary of State, and in the case—

- (a.) Of such order or decree being so sent; or

- (b.) Of it appearing to the satisfaction of a Secretary of State that a soldier of the regular forces has deserted or left in destitute circumstances, without reasonable cause, his wife or any of his legitimate children under fourteen years of age,

the Secretary of State shall order a portion not exceeding sixpence of the daily pay of a non-commissioned officer who is not below the rank of sergeant, and not exceeding threepence of the daily pay of any other soldier, to be deducted from such daily pay, and to be appropriated, in the first case, in liquidation of the sum adjudged to be paid by such order or decree, and in the second case, towards the maintenance of such wife or children, in such manner as the Secretary of State thinks fit.

(3.) Where a proceeding is instituted against a soldier of the regular forces under any Act, or at common law, for the purpose of enforcing against him any such liability as above in this section mentioned, and such soldier is quartered out of the jurisdiction of the court, or, if the proceeding is before a court of summary jurisdiction, out of the petty sessional division in which the proceeding is instituted, the process shall be served on the commanding officer of such soldier, and such service shall not be valid unless there be left therewith, in the hands of the commanding officer, a sum of money (to be adjudged as costs incurred in obtaining the order or decree, if made against the soldier) sufficient to enable him to attend the hearing of the case and return to his quarters, and such sum may be expended by the commanding officer for that purpose; and no process whatever under any Act or at common law in any proceeding in this section mentioned shall be valid against a soldier of the regular forces if served after such soldier is under orders for service beyond the seas.

**146.** A person who is commissioned and in full pay as an officer in Her Majesty's regular forces shall not be capable of being nominated or

elected to be sheriff of any county, borough, or other place, or to be mayor or alderman of, or to hold any office in, any municipal corporation in any city, borough, or place in the United Kingdom.

**147.** Every soldier in Her Majesty's regular forces shall be exempt from serving on any jury.

*Court of Requests in India.*

**148.** (1.) Where any part of Her Majesty's regular forces is serving in India beyond the jurisdiction of any court of small causes established by or under the authority of the Governor General of India in Council, actions of debt and personal actions against officers and other persons subject to military law, with the exception of persons being soldiers of the regular forces, which would be cognizable by such court of small causes if the said part of Her Majesty's regular forces were within the jurisdiction of the court, shall be cognizable before a court of requests composed of officers, and not elsewhere; provided that—

(a.) The value in question does not exceed four hundred rupees; and

(b.) The defendant was a person of the above description when the cause of action arose; and

(c.) Nothing in this Act shall enable an action to be brought in a military court of requests by an officer or soldier of the regular forces against an officer of the regular forces.

(2.) The commanding officer of any camp, garrison, cantonment, or military post is hereby empowered to convene any such court.

(3.) Whenever, owing to paucity of officers, or to any other cause, a court of requests cannot conveniently be held at the place where the defendant may be, the officer commanding the division or district may authorize a court to be convened by the officer commanding at the nearest place where such court can be formed.

**149.** (1.) Courts of requests under this Act shall in all practicable cases consist of five officers, and in no instance of less than three.

(2.) The president thereof shall in all practicable cases be a field officer, and in no case be under the rank of a captain.

(3.) Every member shall have served not less than five years as a commissioned officer.

(4.) Before any proceedings are had before such court the president and members shall take the following oath, which oath shall be administered by the president of the court to the other members thereof, and to the president by any sworn member; that is to say,

"You swear, that you will duly administer justice according to the evidence in the matters brought before you. So help you God."

(5.) All witnesses before any such court shall be sworn and examined in the like manner as in the case of a trial by court-martial, and shall be liable to the same punishment for giving false evidence.

(6.) The provisions of this Act with respect to the substitution of a solemn declaration for an oath in the case of a court-martial, shall apply as if they were enacted in this section, and in terms made applicable thereto.



**150.** (1.) A military court of requests held in India under the authority of this Act, on adjudging payment of any sum by any person subject to military law (in this section referred to as the debtor), may either award execution thereof generally, or direct specially that the amount named in the direction, being the whole or any part of the said sum, shall be paid by instalments or otherwise out of any pay or other public money payable to the debtor, and the amount named in the direction, not exceeding one half of such pay and public money, shall, while the debtor is in India, be stopped and paid in conformity with the direction.

(2.) Where execution is awarded generally by a military court of requests, the sum, if not paid forthwith, shall be levied by seizure and public sale of such of the property of the debtor as may be found within the camp, garrison, cantonment, or military post to which the debtor belongs, and, if the proceeds are insufficient to pay the said sum, as may be found within the limits of a camp, garrison, cantonment, or military post in India to which the debtor may belong at any subsequent time.

(3.) The levy and seizure shall be made under a written order of the commanding officer of such camp, garrison, cantonment, or military post, grounded on the judgment of the court.

(4.) The arms and equipment of a debtor shall not be liable to be seized or sold under this section.

(5.) All orders of the commanding officer as to the manner of such sale, or the person by whom the same shall be made, or otherwise respecting the same, shall be duly observed; and if any question arises whether any such property is liable to be seized or sold as aforesaid, the decision of the said commanding officer thereon shall be final.

(6.) If sufficient property is not found within the limits of the camp, garrison, cantonment, or military post, then any pay or public money (not exceeding one half) accruing to the debtor shall, while the debtor is in India, be stopped, in liquidation of the said sum.

(7.) If the debtor does not receive pay as an officer or from any public department, he may be arrested by order of the commanding officer of the camp, garrison, cantonment, or military post, and imprisoned in some convenient place within the camp, garrison, cantonment, or military post, for any period not exceeding two months, unless the said sum be sooner paid.

(8.) The commanding officer shall not, nor shall any person acting on his orders in respect of the matters aforesaid, incur any liability to any person whomsoever for any act done by him in execution or intended execution of the provisions of this section.

**151.** (1.) In India all actions of debt and personal actions against persons subject to military law, other than soldiers of the regular forces, within the jurisdiction of any court of small causes, shall be cognizable by such court to the extent of its powers.

(2.) All such actions where the amount sued for exceeds four hundred rupees shall be cognizable by a civil court or court of small causes only.

(3.) A civil court or court of small causes, upon adjudging payment of any sum by any person subject to military law other than a soldier of the regular forces, may either award execution thereof generally, or may direct specially that the amount named in the direction, being the whole or any part of the said sum, shall be paid by instalments or other-

wise out of any pay or other public money payable to the debtor, and the amount named in the direction, not exceeding one half of such pay and public money, shall, while the debtor is in India, be stopped and paid in conformity with the direction.

(4.) In regard to award of execution generally, a civil court or court of small causes shall proceed in accordance with the rules of procedure of such court in India.

*Legal Penalties in Matters respecting Forces.*

**152.** Any person who falsely represents himself to any military, naval, or civil authority to be a deserter from Her Majesty's regular forces shall on summary conviction be sentenced to be imprisoned, with or without hard labour, for any period not exceeding three months.

**153.** Any person who in the United Kingdom or elsewhere by any means whatsoever—

- (1.) Procures or persuades any soldier to desert, or attempts to procure or persuade any soldier to desert; or
- (2.) Knowing that a soldier is about to desert, aids or assists him in deserting; or
- (3.) Knowing any soldier to be a deserter, conceals such soldier, or aids or assists him in concealing himself, or aids or assists in his rescue,

shall be liable on summary conviction to be imprisoned, with or without hard labour, for a term not exceeding six months.

**154.** With respect to deserters the following provisions shall have effect:

- (1.) Upon reasonable suspicion that a person is a deserter, it shall be lawful for any constable, or if no constable can be immediately met with, then for any officer or soldier or other person, to apprehend such suspected person, and forthwith to bring him before a court of summary jurisdiction:
- (2.) A justice of the peace, magistrate, or other person having authority to issue a warrant for the apprehension of a person charged with crime may, if satisfied by evidence on oath that a deserter is or is reasonably suspected to be within his jurisdiction, issue a warrant authorizing such deserter to be apprehended and brought forthwith before a court of summary jurisdiction:
- (3.) Where a person is brought before a court of summary jurisdiction charged with being a deserter under this Act, such court may deal with the case in like manner as if such person were brought before the court charged with an indictable offence, or in Scotland an offence:
- (4.) The court, if satisfied either by evidence on oath, or by the confession of such person that he is a deserter, shall forthwith, as it may seem to the court most expedient with regard to his safe custody, cause him either to be delivered into military custody in such manner as the court may deem most expedient, or, until he can be so delivered, to be committed to some prison, police station, or other place legally provided for the confinement of persons in custody, for such reasonable time as appears to the court reasonably necessary for the purpose of delivering him into military custody:

- (5.) Where the person confessed himself to be a deserter, and evidence of the truth or falsehood of such confession is not then forthcoming, the court shall remand such person for the purpose of obtaining information as to the truth or falsehood of the said confession, and for that purpose the court shall transmit, if sitting in the United Kingdom to a Secretary of State, and if in India to the general or other officer commanding the forces in the military district or station where the court sits, and if in a colony to the general or other officer commanding the forces in that colony, a return (in this Act referred to as a descriptive return) containing such particulars and being in such form as is specified in the Fourth Schedule to this Act, or as may be from time to time directed by a Secretary of State:
- (6.) The court may from time to time remand the said person for a period not exceeding eight days in each instance and not exceeding in the whole such period as appears to the court reasonably necessary for the purpose of obtaining the said information:
- (7.) Where the court cause a person either to be delivered into military custody or to be committed as a deserter, the court shall send, if in the United Kingdom to a Secretary of State, and if in India or a colony to the general or other officer commanding as aforesaid, a descriptive return in relation such deserter, for which the clerk of the court shall be entitled to a fee of two shillings:
- (8.) A Secretary of State shall direct payment of the said fee.

**155.** Every person (except the Army Purchase Commissioners, and persons acting under their authority by virtue of the Regulation of the Forces Act, 1871,) who negotiates, acts as agent for, or otherwise aids or connives at—

- (1.) The sale or purchase of any commission in Her Majesty's regular forces; or
- (2.) The giving or receiving of any valuable consideration in respect of any promotion in or retirement from such forces, or any employment therein; or
- (3.) Any exchange which is made in manner not authorized by regulations made in pursuance of the Regimental Exchanges Act, 1875, and in respect of which any sum of money or other consideration is given or received,

shall be liable on conviction on indictment or information to a fine of one hundred pounds, or to imprisonment for any period not exceeding six months, and if an officer, on conviction by court-martial, to be dismissed the service.

**156.** (1.) Every person who—

- (a.) Buys, exchanges, takes in pawn, detains, or receives from a soldier, or any person acting on his behalf, on any pretence whatever; or
  - (b.) Solicits or entices any soldier to sell, exchange, pawn, or give away; or
  - (c.) Assists or acts for a soldier in selling, exchanging, pawning, or making away with,
- any of the property following; namely, any arms, ammunition, equipments, instruments, regimental necessities, or clothing, or any military

decorations of an officer or soldier, or any furniture, bedding, blankets, sheets, utensils, and stores in regimental charge, or any provisions or forage issued for the use of an officer or soldier, or his horse, or of any horse employed in Her Majesty's service, shall, unless he proves either that he acted in ignorance of the same being such property as aforesaid, or of the person with whom he dealt being or acting for a soldier, or that the same was sold by order of a Secretary of State or some competent military authority, be liable on summary conviction, in the case of the first offence, to a fine not exceeding twenty pounds, together with treble the value of any property of which such offender has become possessed by means of his offence; and in the case of a second offence, to a fine not less than five pounds, and not exceeding twenty pounds, together with treble the value of any property of which such offender has become possessed by means of his offence, or to imprisonment, with or without hard labour, for a term not exceeding six months.

(2.) Where any such property as above in this section mentioned is found in the possession or keeping of any person, such person may be taken or summoned before a court of summary jurisdiction, and if such court have reasonable ground to believe that the property so found was stolen, or was bought, exchanged, taken in pawn, obtained or received in contravention of this section, then if such person does not satisfy the court that he came by the property so found lawfully and without any contravention of this Act, he shall be liable on summary conviction to a penalty not exceeding five pounds.

(3.) A person charged with an offence against this section, and the wife or husband of such person, may, if he or she think fit, be sworn and examined as an ordinary witness in the case.

(4.) A person found committing an offence against this section may be apprehended without warrant, and taken, together with the property which is the subject of the offence, before a court of summary jurisdiction; and any person to whom any such property as above mentioned is offered to be sold, pawned, or delivered, who has reasonable cause to suppose that the same is offered in contravention of this section, may, and if he has the power shall, apprehend the person offering such property, and forthwith take him, together with such property, before a court of summary jurisdiction.

(5.) A court of summary jurisdiction, if satisfied on oath that there is reasonable cause to suspect that any person has in his possession, or on his premises, any property on or with respect to which any offence in this section mentioned has been committed, may grant a warrant to search for such property, as in the case of stolen goods; and any property found on such search shall be seized by the officer charged with the execution of such warrant, who shall bring the person in whose possession the same is found before some court of summary jurisdiction, to be dealt with according to law.

(6.) For the purposes of this section property shall be deemed to be in the possession or keeping of a person if he knowingly has it in the actual possession or keeping of any other person, or in any house, building, lodging, apartment, field, or place, open or inclosed, whether occupied by himself or not, and whether the same is so had for his own use or benefit, or for the use or benefit of another.

(7.) Articles which are public stores within the meaning of the Public Stores Act, 1875, and are not included in the foregoing description,

shall not be deemed to be stores issued as regimental necessaries, or otherwise within the meaning of section thirteen of that Act.

(8.) It shall be lawful for the Governor General of India or for the legislature of any colony, on the recommendation of the governor thereof, but not otherwise, by any law or ordinance to reduce a minimum fine under this section to such amount as may to such Governor General or legislature appear to be better adapted to the pecuniary means of the inhabitants.

*Jurisdiction.*

**157.** Where a person subject to military law has been acquitted or convicted of an offence by a court-martial, he shall not be liable to be tried again by a court-martial in respect of that offence.

**158.** (1.) Where an offence under this Act has been committed by any person while subject to military law, such person may be taken into and kept in military custody, and tried and punished for such offence, although he, or the corps or battalion to which he belongs, has ceased to be subject to military law, in like manner as he might have been taken into and kept in military custody, tried or punished, if he or such corps or battalion had continued so subject:

Provided that where a person has since the commission of an offence ceased to be subject to military law, he shall not be tried for such offence, except in the case of the offence of mutiny, desertion, or fraudulent enlistment, unless his trial commences within three months after he has ceased to be subject to military law; but this section shall not affect the jurisdiction of a civil court in the case of any offence triable by such court as well as by court-martial.

(2.) Where a person subject to military law is sentenced by court-martial to penal servitude or imprisonment, this Act shall apply to him during the term of his sentence, notwithstanding that he is discharged or dismissed from Her Majesty's service, or has otherwise ceased to be subject to military law, and he may be kept, removed, imprisoned, and punished accordingly as if he continued to be subject to military law.

**159.** Any person subject to military law who within or without Her Majesty's dominions commits any offence for which he is liable to be tried by court-martial may be tried and punished for such offence at any place (either within or without Her Majesty's dominions) which is within the jurisdiction of an officer authorized to convene general courts-martial, and in which the offender may for the time being be, in the same manner as if the offence had been committed where the trial by court-martial takes place, and the offender were under the command of the officer convening such court-martial.

**160.** No person shall be subject to any punishment or penalties under the provisions of this Act other than those which could have been inflicted if he had been tried in the place where the offence was committed.

**161.** A person shall not in pursuance of this Act be tried or punished for any offence triable by court-martial committed more than three years before the date at which his trial begins, except in the case of the

offence of mutiny, desertion, or fraudulent enlistment; but this section shall not affect the jurisdiction of a civil court in the case of any offence triable by such court, as well as by court-martial; and where a soldier has served continuously in an exemplary manner for not less than three years in any corps of Her Majesty's regular forces he shall not be tried for any such offence of desertion (other than desertion on active service), or of fraudulent enlistment, as was committed before the commencement of such three years, but where such offence was fraudulent enlistment all service prior to such enlistment shall be forfeited.

**162.** (1.) If a person sentenced by a court-martial in pursuance of this Act to punishment for an offence is afterwards tried by a civil court for the same offence, that court shall, in awarding punishment, have regard to the military punishment he may have already undergone.

(2.) Save as aforesaid, nothing in this Act shall exempt an officer or soldier from being proceeded against by the ordinary course of law, when accused or convicted of any offence, except such an offence as is declared not to be a crime for the purpose of the provisions of this Act relating to taking a soldier out of Her Majesty's service.

(3.) If an officer—

(a.) Neglects or refuses on application to deliver over to the civil magistrate any officer or soldier under his command, who is so accused or convicted as aforesaid; or

(b.) Wilfully obstructs or neglects or refuses to assist constables or other ministers of justice in apprehending any such officer or soldier,

such commanding officer shall, on conviction in any of Her Majesty's superior courts in the United Kingdom, or in a supreme court in India, be guilty of a misdemeanor.

(4.) A certificate of a conviction of an officer under this section, with the judgment of the court thereon in such form as may be directed by a Secretary of State, shall be transmitted to such Secretary of State.

(5.) Any offence committed by any such commanding officer out of the United Kingdom shall for the purpose of the apprehension, trial and punishment of the offender be deemed to have been committed within the jurisdiction of Her Majesty's High Court of Justice in England; and such court shall have jurisdiction as if the place where the offence was committed or the offender may for the time being be were in England.

(6.) Where a person subject to military law has been acquitted or convicted of an offence by a competent civil court, he shall not be liable to be tried in respect of that offence under this Act.

#### *Evidence.*

**163.** (1.) The following enactments shall be made with respect to evidence in proceedings under this Act, whether before a civil court or a court-martial; that is to say,

(a.) The attestation paper purporting to be signed by a person on his being attested as a soldier, or the declaration purporting to be made by any person upon his reengagement in any of Her Majesty's regular forces, or upon any enrolment in any branch of Her Majesty's service, shall be evidence of such person having given

the answers to questions which he is therein represented as having given :

The enlistment of a person in Her Majesty's service may be proved by the production of a copy of his attestation paper purporting to be certified to be a true copy by the officer having the custody of the attestation paper without proof of the handwriting of such officer, or of his having the custody of the paper :

- (b.) A letter, return, or other document respecting the service of any person in or the discharge of any person from any portion of Her Majesty's forces, or respecting a person not having served in or belonged to any portion of Her Majesty's forces, if purporting to be signed by or on behalf of a Secretary of State, or of the Commissioners of the Admiralty, or by the commanding officer of any portion of Her Majesty's forces, or of any of Her Majesty's ships, to which such person appears to have belonged, or alleges that he belongs or had belonged, shall be evidence of the facts stated in such letter, return, or other document :
- (c.) Copies purporting to be printed by a Government printer of Queen's regulations, of royal warrants, of army circulars, and of rules made by Her Majesty, or a Secretary of State, in pursuance of this Act, shall be evidence of such regulations, royal warrants, army circulars, and rules :
- (d.) An army list or gazette purporting to be published by authority, and either to be printed by a Government printer or to be issued, if in the United Kingdom, by Her Majesty's Stationery Office, and if in India, by some office under the Governor General of India or the Governor of any presidency in India, shall be evidence of the status and rank of the officers therein mentioned, and of any appointment held by such officers, and of the corps or battalion or arm or branch of the service to which such officers belong :
- (e.) Any warrants or orders made in pursuance of this Act by any military authority shall be deemed to be evidence of the matters and things therein directed to be stated by or in pursuance of this Act, and any copies of such warrants or orders purporting to be certified to be true copies by the officer therein alleged to be authorized by a Secretary of State or Commander-in-Chief to certify the same shall be admissible in evidence :
- (f.) Evidence of the delivery at the then last registered place of abode of a man enrolled in the Army Reserve of a notice issued by the proper officer under the direction of a Secretary of State or of the delivery of a letter containing such notice addressed to the said place of abode, shall be evidence that such notice was brought to the knowledge of such man :
- (g.) Where a record is made in one of the regimental books in pursuance of any Act or of the Queen's regulations, or otherwise in pursuance of military duty, and purports to be signed by the commanding officer or by the officer whose duty it is to make such record, such record shall be evidence of the facts thereby stated :
- (h.) A copy of any record in one of the said regimental books purporting to be certified to be a true copy by the officer having the custody of such book shall be evidence of such record :
- (i.) A descriptive return within the meaning of this Act, purporting

to be signed by a justice of the peace, shall be evidence of the matters therein stated.

(2.) For the purposes of this Act the expression "Government printer" means any printer to Her Majesty, and in India any Government press.

**164.** Whenever any person subject to military law has been tried by any civil court, the clerk of such court, or his deputy, or other officer having the custody of the records of such court, shall, if required by the commanding officer of such person, or by any other officer, transmit to him a certificate setting forth the offence for which the person was tried, together with the judgment of the court thereon if he was convicted, and the acquittal if he was acquitted, and shall be allowed for such certificate a fee of three shillings. Any such certificate shall be sufficient evidence of the conviction and sentence or of the acquittal of the prisoner, as the case may be.

**165.** The original proceedings of a court-martial, purporting to be signed by the president thereof and being in the custody of the Judge Advocate General, or of the officer having the lawful custody thereof, shall be deemed to be of such a public nature as to be admissible in evidence on their mere production from such custody; and any copy purporting to be certified by such Judge Advocate General or his deputy authorized in that behalf, or by the officer having such custody as aforesaid, to be a true copy of such proceedings or of any part thereof, shall be admissible in evidence without proof of the signature of such Judge Advocate General, deputy, or officer; and a Secretary of State, upon production of any such proceedings or certified copy, may by warrant under his hand authorize the offender appearing therefrom to have been convicted and sentenced to any punishment, to be imprisoned and otherwise dealt with in accordance with the sentence in the proceedings or certified copy mentioned.

#### *Summary and other Legal Proceedings.*

**166.** (1.) A court of summary jurisdiction having jurisdiction in the place where the offence was committed or in the place where the offender may for the time being be shall have jurisdiction over all offences triable in a civil court under this Act, except any such offence as is declared by this Act to be a misdemeanor, or to be punishable on indictment; and any offence within the jurisdiction of a court of summary jurisdiction may be prosecuted, and the fine and forfeiture in respect thereof may be recovered on summary conviction, in manner provided by the Summary Jurisdiction Acts.

(2.) Any proceedings taken before a court of summary jurisdiction in pursuance of this Act shall be taken in accordance with the Summary Jurisdiction Acts so far as applicable.

(3.) A court of summary jurisdiction imposing a fine in pursuance of this Act may, if it seem fit, order a portion of such fine not exceeding one half to be paid to the informer.

(4.) Where the maximum fine or imprisonment which a court of summary jurisdiction in England, when sitting in an occasional court-house, is authorized by law to impose is less than the minimum fine or imprisonment fixed by this Act, the court may impose the maximum fine or



imprisonment which such court is authorized by law to impose, but if required by either party, shall adjourn the case to the next practicable petty sessional court.

(5.) The court of summary jurisdiction in Ireland, when hearing and determining a case arising under this Act, shall be constituted either of two or more justices of the peace sitting at some court or public place at which justices are for the time being accustomed to assemble for the purpose of holding petty sessions, or of some magistrate or officer sitting alone or with others at some court or other place appointed for the public administration of justice and for the time being empowered by law to do alone any Act authorized to be done by more than one justice of the peace.

(6.) Subject to the provisions of this Act with regard to the payment to the informer, fines and other sums recovered before a court of summary jurisdiction in pursuance of this Act shall, notwithstanding anything contained in any other Act, if recovered in England, be paid into the exchequer, and if recovered in Ireland, shall be applied in manner directed by the Fines Act (Ireland), 1851, and any Acts amending the same.

**167.** (1.) In Scotland, offences and fines which may be prosecuted and recovered on summary conviction may be prosecuted and recovered and proceedings under this Act may be taken at the instance of the procurator fiscal of the court, or of any person in that behalf authorized by a Secretary of State or the Commander-in-Chief, or of any person authorized by this Act to complain.

(2.) All fines under this Act in default of payment, and all orders made under this Act failing compliance, may be enforced by imprisonment for a term to be specified in the order or conviction, but not exceeding three months, and the conviction and warrant may be in the form number three of Schedule K of the Summary Procedure Act, 1864.

(3.) All fines and other sums recovered under this Act before a court of summary jurisdiction, subject to any payment made to the informer, shall be paid to the Queen's and Lord Treasurer's Remembrancer, on behalf of Her Majesty.

(4.) It shall be no objection to the competency of a person to give evidence as a witness in any prosecution for offences under this Act, that such prosecution is brought at the instance of such person.

(5.) Every person convicted of an offence under this Act shall be liable in the reasonable costs and charges of such conviction.

(6.) All jurisdictions, powers, and authorities necessary for the purposes of this Act are conferred on the sheriffs and their substitutes and on justices of the peace.

(7.) The court may make, and may also from time to time alter or vary, summary orders under this Act on petition by the procurator fiscal of the court, or such person as aforesaid, presented in common form.

**168.** All offences under this Act which may be prosecuted, and all fines under this Act which may be recovered on summary conviction, and all proceedings under this Act which may be taken before a court of summary jurisdiction, may be prosecuted and recovered and taken in the Isle of Man, Channel Islands, India, and any colony in such courts and in such manner as may be from time to time provided therein

by law, or if no express provision is made, then in and before the courts and in the manner in which the like offences and fines may be prosecuted and recovered and proceedings taken therein by law, or as near thereto as circumstances admit.

**169.** It shall be lawful for the Governor General of India, and for the legislature of any colony, to provide by law for reducing any fine directed by this Act to be recovered on summary conviction to such amount as may appear to the Governor General or legislature to be better adapted to the pecuniary means of the inhabitants, and also to declare the amount of the local currency which is to be deemed for the purposes of this Act to be equivalent to any sum of British currency mentioned in this Act.

**170.** (1.) Any action, prosecution, or proceeding against any person for any act done in pursuance or execution or intended execution of this Act, or in respect of any alleged neglect or default in the execution of this Act, shall not lie or be instituted unless it is commenced within twelve months next after the act, neglect, or default complained of, or, in case of a continuance of injury or damage, within twelve months next after the ceasing thereof.

(2.) In any such action tender of amends before the action was commenced may, in lieu of or in addition to any other plea, be pleaded. If the action was commenced after such tender, or is proceeded with after payment into court of any money in satisfaction of the plaintiff's claim, and the plaintiff does not recover more than the sum tendered or paid, he shall not recover any costs incurred after such tender or payment, and the defendants shall be entitled to costs, or be taxed as between solicitor and client, as from the time of such tender or payment; but this provision shall not affect costs on any injunction in the action.

(3.) Every such action, and also every action against a member or minister of a court-martial in respect of a sentence of such court, or of anything done by virtue of or in pursuance of such sentence, shall be brought in one of Her Majesty's superior courts in the United Kingdom (which courts shall have jurisdiction to try the same wherever the matter complained of occurred) or in a supreme court in India, or in any Colonial court of superior jurisdiction, provided the matter complained of occurred within the jurisdiction of such Indian or Colonial court respectively, and in no other court whatsoever.

#### *Miscellaneous.*

**171.** Any power or jurisdiction given to, and any act or thing to be done by, to, or before any person holding any military office may be exercised by, or done by, to, or before any other person for the time being authorized in that behalf according to the custom of the service, or according to rules made under section seventy of this Act.

**172.** (1.) Where any order is authorized by this Act to be made by the Commander-in-Chief or the Adjutant-General, or by the Commander-in-Chief or Adjutant-General of the forces in India or in any presidency in India, or by any general or other officer commanding, such order may be signified by an order, instruction, or letter under the hand of any officer authorized to issue orders on behalf of such Commander-in-

Chief, Adjutant-General, or general or other officer commanding, and an order, instruction, or letter purporting to be signed by any officer appearing therein to be so authorized shall be evidence of his being so authorized.

(2.) The foregoing enactment of this section shall extend to any order or directions issued in pursuance of this Act in relation to a military convict or military prisoner, and any such order or directions shall not be held void by reason of the death or removal from office of the officer signing or ordering the issue of the same, or by reason of any defect in such order or directions, if it be alleged in such order or directions that the convict or prisoner has been convicted, and there is a good and valid conviction to sustain the order or directions.

(3.) An order in any case if issued in the prescribed form shall be valid, but an order deviating from the prescribed form if otherwise valid shall not be rendered invalid by reason only of such deviation.

(4.) Where any military convict or military prisoner is for the time being in custody, whether military or civil, in any place or manner in which he might legally be kept in pursuance of this Act, the custody of such convict or prisoner shall not be deemed to be illegal only by reason of any informality or error in or as respects the order, warrant, or other document, or the authority by or in pursuance whereof such convict or prisoner was brought into or is detained in such custody, and any such order, warrant, or document may be amended accordingly.

(5.) Where a military convict, or a military prisoner, or a person who is subject to military law and charged with an offence, is a prisoner in military custody, and for the purpose of conveyance by sea is delivered on board a ship to the person in command of the ship or to any other person on board the ship acting under the authority of the commander, the order of the military authority which authorizes the prisoner to be conveyed by sea shall be a sufficient authority to such person, and to the person for the time being in command of the ship, to keep the said prisoner in custody and convey him in accordance with the order, and the prisoner while so kept shall be deemed to be kept in military custody.

**173.** If any soldier on furlough is detained by sickness or other casualty rendering necessary any extension of such furlough in any place, and there is not any officer in the performance of military duty of the rank of captain, or of higher rank, within convenient distance of the place, any justice of the peace who is satisfied of such necessity may grant an extension of furlough for a period not exceeding one month; and the said justice shall by letter immediately certify such extension and the cause thereof to the commanding officer of such soldier, if known, and if not, then to a Secretary of State. The soldier may be recalled to duty by his commanding officer or other competent military authority, and the furlough shall not be deemed to be extended after such recall; but, save as aforesaid, the soldier shall not in respect of the period of extension of furlough, be liable to be treated as a deserter, or as absent without leave.

**174.** (1.) When a person holds a canteen under the authority of a Secretary of State or the Admiralty, it shall be lawful for any two justices within their respective jurisdictions to grant, transfer, or renew any license for the time being required to enable such person to obtain or

hold any excise license for the sale of any intoxicating liquor, without regard to the time of year, and without regard to the requirements as to notices, certificates, or otherwise, of any Acts for the time being in force affecting such licenses; and excise licenses may be granted to such persons accordingly.

(2.) For the purposes of this section the expression license includes any license or certificate for the time being required by law to be granted, renewed, or transferred by any justices of the peace, in order to enable any person to obtain or hold any excise license for the sale of any intoxicating liquor.

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## **Part V.—Application of Military Law, Saving Provisions, and Definitions.**

### *Persons Subject to Military Law.*

**175.** The persons in this section mentioned are persons subject to military law as officers, and this Act shall apply accordingly to all the persons so specified; that is to say,

- (1.) Officers of the regular forces on the active list, within the meaning of any Royal Warrant for regulating the pay and promotion of the regular forces, and officers not on such active list who are employed on military service under the orders of an officer of the regular forces, who is subject to military law:
- (2.) Officers who are members of the permanent staffs of any of the auxiliary forces, and are not otherwise subject to military law:
- (3.) Officers of the militia other than members of the permanent staff:
- (4.) All such persons not otherwise subject to military law as may be serving in the position of officers of any troops or portion of troops raised by order of Her Majesty beyond the limits of the United Kingdom and of India, and serving under the command of an officer of the regular forces:

Provided that nothing in this Act shall affect the application to such persons of any Act passed by the legislature of the colony:

- (5.) Officers of the yeomanry, and officers of the volunteers, whenever in actual command of men who are in pursuance of this Act subject to military law, or when their corps is on actual military service:
- (6.) Any officer of the yeomanry or volunteers, whether in receipt of pay or otherwise, during and in respect of the time when with his own consent he is attached to or doing duty with any body of troops for the time being subject to military law, whether of the regular or auxiliary forces, or, with his own consent, is ordered on duty by the military authorities:
- (7.) Every person not otherwise subject to military law who under the general or special orders of a Secretary of State or of the Governor General of India accompanies in an official capacity equivalent to that of officer any of Her Majesty's troops on active service in any place beyond the seas, subject to this qualification, that where such person is a native of India he shall be subject to Indian military law as an officer:
- (8.) Any person, not otherwise subject to military law, accompanying

a force on active service, who shall hold from the commanding officer of such force a pass, revocable at the pleasure of such commanding officer, entitling such person to be treated on the footing of an officer.

**176.** The persons in this section mentioned are persons subject to military law as soldiers, and this Act shall apply accordingly to all the persons so specified; that is to say,

- (1.) All soldiers of the regular forces:
- (2.) All non-commissioned officers and men of the permanent staff of any of the auxiliary forces who are not otherwise subject to military law:
- (3.) All non-commissioned officers and men serving in a force raised by order of Her Majesty beyond the limits of the United Kingdom and of India, and serving under the command of an officer of the regular forces:

Provided that nothing in this Act shall affect the application to such non-commissioned officers and men of any Act passed by the legislature of a colony:

- (4.) All pensioners not otherwise subject to military law who are employed in military service under the orders of an officer of the regular forces:
- (5.) All non-commissioned officers and men belonging to the army reserve force or the militia reserve force,—
  - (a.) When called out for training and exercise; and
  - (b.) When called out for duty in aid of the civil power; and
  - (c.) When called out on permanent service under Her Majesty's proclamation:
- (6.) All non-commissioned officers and men in the militia of the United Kingdom,—
  - (a.) During their preliminary training; and
  - (b.) When they or the body of militia to which they belong are being trained or exercised, either alone or with any portion of the regular forces or otherwise; and
  - (c.) When attached to or otherwise acting as part of or with any regular forces; and
  - (d.) When embodied:
- (7.) All non-commissioned officers and men belonging to the yeomanry force of the United Kingdom,—
  - (a.) When they or their corps are being trained or exercised, either alone or with any portion of regular forces, or with any portion of the militia when subject to military law; and
  - (b.) When they are attached to or otherwise acting as part of or with any regular forces; and
  - (c.) When their corps is on actual military service; and
  - (d.) When serving in aid of the civil power:
- (8.) All non-commissioned officers and men belonging to the volunteer forces of the United Kingdom,—
  - (a.) When they are being trained or exercised with any portion of the regular forces or with any portion of the militia when subject to military law; and
  - (b.) When they are attached to or otherwise acting as part of or with any regular forces; and

(c.) When their corps is on actual military service:

Provided that it shall be the duty of the commanding officer of any part of the volunteer force not in actual military service, when he knows that any non-commissioned officers or men belonging to that force are about to enter upon any service which will render them subject to military law, to provide for their being informed that they will become so subject, and for their having an opportunity of abstaining from entering on that service.

(9.) All persons who are employed by or are in the service of any of Her Majesty's troops when employed on active service beyond the seas, and who are not under the former provisions of this Act subject to military law.

(10.) All persons not otherwise subject to military law who are followers of or accompany Her Majesty's troops, or any portion thereof, when employed on active service beyond the seas; subject to this qualification, that where any such persons are employed by or are followers of, or accompany any portion of, Her Majesty's forces, consisting partly of Her Majesty's Indian forces subject to Indian military law, and such persons are natives of India, they shall be subject to Indian military law.

**177.** Where any force of volunteers, or of militia, or any other force is raised in India or in a colony, any law of India or the colony may extend to the officers, non-commissioned officers and men belonging to such force, whether within or without the limits of India or the colony; and where any such force is serving with part of Her Majesty's regular forces, then so far as the law of India or the colony has not provided for the government and discipline of such force, this Act and any other Act for the time being amending the same shall, subject to such exceptions and modifications as may be specified in the general orders of the general officer commanding Her Majesty's forces with which such force is serving, apply to the officers, non-commissioned officers, and men of such force, in like manner as they apply to the officers, non-commissioned officers, and men respectively mentioned in the two preceding sections of this Act.

**178.** When officers, non-commissioned officers, and men belonging to the auxiliary forces, or any pensioners, are subject to military law in pursuance of this Act, such officers, non-commissioned officers, men and pensioners shall be subject to this Act in all respects as if they were part of the regular forces, and the provisions of this Act shall be construed as if such officers, non-commissioned officers, men and pensioners were included in the expression "regular forces:" Provided that nothing in this section contained shall affect the conditions of service of any officer, non-commissioned officer, or man belonging to such auxiliary forces, or of any pensioner.

**179.** In the application of this Act to Her Majesty's Royal Marines the following modifications shall be made:

(1.) Nothing in this Act shall prejudice any power of the Admiralty to make Articles of War for the Royal Marines or otherwise prejudice the authority of the Admiralty over the Royal Marines or confer on any officers who are not officers of the Royal Marines any

greater authority to command the Royal Marines than they have heretofore used; and a general court-martial for the trial of an officer or man in the Royal Marines shall not be convened except by an officer authorized by a warrant from the Admiralty in pursuance of this section, and except that, where such officer or man while subject to this Act is serving beyond the seas with any other portion of the regular forces, and in the opinion of the general or other officer commanding those forces (such opinion to be stated in the order convening the court and to be conclusive), there is not present any officer authorized by warrant from the Admiralty to convene a general court-martial, a general court-martial convened by such general, or other officer, if authorized to convene general courts-martial, may try such officer or man.

- (2.) A district court-martial for the trial of a man in the Royal Marines may be convened by any officer having authority to convene a district court-martial for the trial of any soldier of any other portion of the regular forces.
- (3.) Any power in relation to the convening of courts-martial, or of authorizing an officer to convene courts-martial, or to delegate the powers of convening courts-martial, or of confirming the findings and sentences of courts-martial, or otherwise in relation to courts-martial, which under this Act Her Majesty may exercise by any warrant or warrants, may be exercised in Her Majesty's name by a warrant or warrants from the Admiralty; and any such warrant may be addressed to any officer to whom any warrant of Her Majesty can be addressed.
- (4.) Any power vested by this Act in Her Majesty in relation to the confirmation of the findings and sentences of courts-martial, or otherwise in relation to courts-martial, may be exercised by the Admiralty.
- (5.) Without prejudice to any power of confirmation, the findings and sentences of any general or district court-martial on an officer or man of the Royal Marines may be confirmed by an officer authorized under this section to convene the same, or by any officer otherwise authorized under this Act to confirm the findings and sentences of general or district courts-martial, as the case may be, for the trial of any soldier of any other portion of the regular forces.
- (6.) Any power vested in Her Majesty by this Act in relation to the making of rules, or to any order with respect to pay, or to any complaint in respect of an officer who thinks himself wronged, shall be vested in and exercised by the Admiralty, and the provisions of this Act respectively relating to such rules, orders, and complaints shall be construed, so far as respects the Royal Marines, as if the Admiralty were substituted for Her Majesty, as well as for the Secretary of State.
- (7.) Anything required or authorized by this Act to be done by, to, or before a Secretary of State, the Commander-in-Chief, Adjutant-General, or Judge Advocate General, may, as regards the Royal Marines, be done by, to, or before the Admiralty; and the provisions of this Act shall be construed, so far as respects the Royal Marines, as if "the Admiralty" were substituted for "Secretary of

- State," "Commander-in-Chief," "Adjutant-General," and "Judge Advocate General," wherever those words occur.
- (8.) Anything required or authorized by this Act to be done by, to, or before the Commander-in-Chief of the forces in India, or of any presidency in India, or the general or other officer commanding the forces in any colony or elsewhere, may, as regards the Royal Marines, be done by, to, or before such officer as the Admiralty may by warrant from time to time appoint in that behalf, and, if no such appointment is made, by such Commander-in-Chief or general or other officer.
- (9.) Anything authorized by this Act to be done by Royal Warrant may be done, as regards the Royal Marines, by warrant of the Admiralty, and the provisions of this Act with respect to Royal warrants printed by the Government printer shall apply to any warrants of the Admiralty under this Act.
- (10.) Anything authorized to be done by the deputy of the Judge Advocate General may be done by any one of the Commissioners for executing the office of Lord High Admiral, or by a secretary of the Admiralty.
- (11.) In the provisions of this Act with respect to evidence, the expression "Queen's Regulations" shall be deemed to include Admiralty Regulations.
- (12.) Nothing in the provisions of this Act relating to the term of enlistment, to the conditions of service, to appointment or transfer, to transfer to the reserve, to the reengagement or prolongation of service or to forfeiture of service of a soldier of the regular forces, or to the rules for reckoning service for discharge or transfer to the reserve, shall apply to the Royal Marines. Save that if regulations made by a Secretary of State and the Admiralty provide for the transfer of men of the Royal Marines to any other part of Her Majesty's regular forces, a man of the Royal Marines may, with his consent, be so transferred in accordance with the said regulations, and, subject to those regulations, shall become a soldier of the said part of Her Majesty's regular forces in like manner, so nearly as circumstances admit, as if he had been enlisted in pursuance of this Act.
- (13.) A marine on his reengagement shall make a declaration, either before a justice of the peace or person having under this Act the same authority as a justice of the peace, for the purposes of enlistment, or before a naval officer commanding any ship commissioned by Her Majesty, or before the commanding officer of any battalion or detachment of Royal Marines, in the form from time to time directed by the Admiralty.
- (14.) A man in the Royal Marines shall forfeit his service for fraudulent enlistment and absence without leave in like manner as he forfeits it for desertion under the Acts relating to the Royal Marines.
- (15.) Officers and men of the Royal Marines, during the time that they are borne on the books of any ship commissioned by Her Majesty (otherwise than for service on shore), shall be subject to the Naval Discipline Act, 1866, and to the laws for the government of officers and seamen of the Royal Navy, and to the rules for the discipline of the Royal Navy for the time being, and shall be tried



and punished for any offence in the same manner as officers and seamen in the Royal Navy:

Provided that—

- (a.) The last-mentioned provision shall not prevent the application of this Act to any person dealing with or having any relations with any such officer or man of the Royal Marines or to any such officer or man if found on shore as a deserter or absentee without leave; and
- (b.) If any such officers or men of the Royal Marines are employed on land, the senior naval officer present may, if it seems to him expedient, order that they shall, during such employment, be subject to military law under this Act, and while such order is in force they shall be subject to military law under this Act accordingly.
- (16.) If any officer or man of the Royal Marines who is borne on the books of any ship commissioned by Her Majesty commits an offence for which he is not amenable to a naval court-martial, but for which he can be punished under this Act, he may be tried and punished for such offence under this Act.
- (17.) The Admiralty may direct that an officer or man of the Royal Marines may be tried under this Act for any offence committed by him on shore, whether he be or be not amenable to a naval court-martial for such offence, or be or be not borne on the books of any ship commissioned by Her Majesty.
- (18.) Where any officer or man of the Royal Marines is on board any ship commissioned by Her Majesty, but is borne on the books thereof for service on shore, he shall be subject to the Naval Discipline Act, 1866, to such extent and under such regulations as Her Majesty by Order in Council from time to time directs, and, so far as she does not so direct, as is for the time being directed by Order in Council with respect to the other regular forces.
- (19.) Any naval prison within the meaning of the Naval Discipline Act, 1866, shall be deemed to be included in the definition of a public prison for the purposes of this Act, and the Admiralty shall not have any authority to establish any military prison under this Act.
- (20.) In this section the expression "Admiralty" means the Lord High Admiral or the Commissioners for executing the office of the Lord High Admiral for the time being, or any two of them.
- (21.) The expression "man of the Royal Marines" includes a non-commissioned officer of the Royal Marines.

**180.** (1.) In the application of this Act to Her Majesty's forces when serving in India the following modification shall be made:

- A court-martial may take the same proceedings for the punishment of a person not subject to military law who, in any part of India, commits any offence as a witness before a court-martial, or is guilty of a contempt of a court-martial, as might be taken by any civil court in that part of India in the case of the like offence in that court, and any court in which such proceedings are taken shall have jurisdiction to punish such person accordingly.
- (2.) In the application of this Act to Her Majesty's Indian forces the following modifications shall be made:
  - (a.) Nothing in this Act shall prejudice or affect the Indian military

law respecting officers or soldiers or followers in Her Majesty's Indian forces, being natives of India; and on the trial of all offences committed by any such native officer, soldier, or follower, reference shall be had to the Indian military law for such native officers, soldiers, or followers, and to the established usages of the service, but courts-martial for such trials may be convened in pursuance of this Act.

- (b.) For the purposes of this Act the expression "Indian military law" means the Articles of War or other matters made, enacted, or in force, or which may hereafter be made, enacted, or in force under the authority of the Government of India; and such articles or other matters shall extend to such native officers, soldiers, and followers wherever they are serving.
- (c.) The Governor of any presidency in India may suspend the proceedings of any court-martial held in India on an officer or soldier belonging to Her Majesty's Indian forces within such presidency.
- (d.) An officer belonging to Her Majesty's Indian forces who thinks himself wronged by his commanding officer, and on due application made to him does not receive the redress to which he may consider himself entitled, may complain to the Commander-in-Chief in the presidency to which such officer belongs, who shall cause his complaint to be inquired into, and thereupon report to the Governor of such presidency in order to receive the further directions of that Governor.
- (e.) A court-martial may sentence an officer of the Indian staff corps to forfeit all or any part of his army or staff service, or all or any part of both.
- (f.) The Governor of any of the presidencies in India may reduce any warrant officer not holding an honorary commission, who is serving in or belonging to such presidency, to a lower grade of warrant rank, or may remand any such warrant officer to regimental duty in the regimental rank held by him immediately previous to his appointment to be a warrant officer.
- (g.) The provisions of this Act relating to warrant officers not holding honorary commissions shall apply to hospital apprentices in India although not appointed by warrant.
- (h.) Part Two of this Act shall not apply to Her Majesty's Indian forces, but persons may be enlisted and attested in India for medical service or for other special service in Her Majesty's Indian forces for such periods, by such persons, and in such manner as may be from time to time authorized by the Governor General of India.
- (3.) In this Act, so far as regards India, any reference to an indictable offence, or an offence punishable on indictment, shall be deemed to refer to an offence punishable with rigorous imprisonment.

**181.** (1.) The provisions of this Act with respect to enlistment shall not apply to a person enlisted or enrolled in any of Her Majesty's auxiliary forces, except so far as such person enlists or attempts to enlist in the regular forces, and except so far as the said provisions may be applied by any other Act.

(2.) The provisions of this Act shall apply to the permanent staff of the auxiliary forces who are not otherwise part of the regular forces, in like manner as if such permanent staff were part of the regular forces.

(3.) The provisions of this Act with respect to billeting and impressment of carriages shall apply to Her Majesty's auxiliary forces when subject to military law, in like manner as if they were part of the regular forces, subject to the following modification:

(4.) An order issued and signed as a route or an order signed by the officer commanding the battalion of militia, or the battalion or corps of yeomanry, or volunteers, shall be substituted for a route,—

(a.) In the case of any militiaman attending for his preliminary training; and

(b.) In the case of any militia officer, non-commissioned officer, or man, assembled for training and exercise at the place in the United Kingdom appointed by Her Majesty in that behalf; and

(c.) In the case of any militia officer, non-commissioned officer, or man, embodied under an order of Her Majesty, who has joined his corps at the place appointed for his assembling; and

(d.) In the case of any officer, non-commissioned officer, or man, of the yeomanry, or volunteers attending at the place at which his corps is required to assemble;

and an order to billet such officer, non-commissioned officer, or man, purporting to be signed in manner required by this Act in the case of a route or by the officer commanding a battalion of militia, or a battalion or corps of yeomanry, or volunteers, as the case may be, shall be evidence, until the contrary is proved, of the order being issued in accordance with this Act, and when delivered to an officer, non-commissioned officer, or man of the militia, yeomanry or volunteers, shall be a sufficient authority to such officer, non-commissioned officer, or man, to demand billets, and when produced by an officer, non-commissioned officer, or man to a constable shall be conclusive evidence to such constable of the authority of the officer, non-commissioned officer, or man producing the same to demand billets in accordance with the order.

(5.) The competence or liability of an officer of the auxiliary forces to be nominated or elected to, or to hold the office of sheriff, mayor, or alderman, or an office in a municipal corporation, shall not be affected by reason of the battalion or corps to which he belongs being assembled for annual training at the time of such nomination or election, or during the time of his tenure of office.

(6.) When a member of the volunteers, being a non-commissioned officer or private, is subject to military law, dismissal may be awarded to him as a punishment, in the event of his committing any offence triable by court-martial or punishable by a commanding officer under this Act.

**189.** The provisions of this Act shall apply to a warrant officer not holding an honorary commission in like manner as if he were a non-commissioned officer, subject nevertheless (in addition to the modifications for a non-commissioned officer) to the following modifications:

(1.) He shall not be punished by his commanding officer nor tried by regimental court-martial, nor sentenced by a district court-martial to any punishment not in this section mentioned; and

(2.) Without prejudice to any other power of a court-martial, he may be sentenced by a court-martial other than a regimental court-martial to be dismissed from the service or to be suspended from rank, and pay, and allowances, for any period stated by the court-martial,

or to be reduced to the bottom or any other place in the list of the rank which he holds, or to be reduced to an inferior class of warrant officer (if any), or if he was originally enlisted as a soldier and transferred to serve as a warrant officer, but not otherwise, to be reduced to a lower grade or to the ranks;

- (3.) A warrant officer reduced to the ranks or remanded to regimental duty in the rank of private shall not be required to serve in the ranks as a soldier;
- (4.) The president of a court-martial for the trial of a warrant officer shall in no case be under the rank of captain.

**183.** In the application of this Act to a non-commissioned officer the following modifications shall apply:

- (1.) The obligation on a commanding officer to deal summarily with a soldier charged with drunkenness shall not apply to a non-commissioned officer charged with drunkenness;
- (2.) The Commander-in-Chief, and in India the Commander-in-Chief of the forces in India, and also the Commander-in-Chief of the forces in any presidency in India, may reduce any non-commissioned officer to any lower grade or to the ranks:
- (3.) A non-commissioned officer may be reduced by the sentence of a court-martial to any lower grade or to the ranks, either in addition to or without any other punishment, in respect of an offence:
- (4.) A non-commissioned officer sentenced by court-martial to penal servitude or imprisonment shall be deemed to be reduced to the ranks:

Provided that—

- (a.) An army schoolmaster shall not be liable to be reduced to the ranks but may nevertheless be sentenced by a court-martial to penal servitude or imprisonment, or to a lower grade of pay, or to be dismissed, and if sentenced to penal servitude or imprisonment, shall be deemed to be dismissed; but
- (b.) The Commander-in-Chief, and in India the Commander-in-Chief of the forces in India, and also the Commander-in-Chief of the forces of any presidency in India, may dismiss an army schoolmaster:
- (c.) A soldier being an acting non-commissioned officer by virtue of his employment either in a superior rank or in an appointment may be ordered by his commanding officer either for an offence or otherwise to revert to his permanent grade as a non-commissioned officer, or if he has no permanent grade above the ranks, to the ranks.

**184.** In the application of this Act to persons who do not belong to Her Majesty's forces, the following modifications shall be made:

(1.) Where an offence has been committed by any person subject to military law who does not belong to Her Majesty's forces, such person may be tried by any description of court-martial other than a regimental court-martial, convened by an officer authorized to convene such description of court-martial, within the limits of whose command the offender may for the time being be, and may be tried and on conviction dealt with and punished accordingly.

(2.) Any person subject to military law who does not belong to Her Majesty's forces shall, for the purposes of this Act relating to offences,

be deemed to be under the command of the commanding officer of the corps or portion of a corps (if any) to which he is attached, and if he is not attached to any corps or portion of a corps under the command of any officer who may for the time being be named as his commanding officer by the general or other officer commanding the force with which such person may for the time being be, or of any other prescribed officer, or, if no such officer is named or prescribed, under the command of said general or other officer commanding, but such person shall not be liable to be punished by a commanding officer or by a regimental court-martial :

Provided that a general or other officer commanding shall not place a person under the command of an officer of rank inferior to the official rank of such person if there is present, at the place where such person is, any officer of higher rank under whose command he can be placed.

#### *Saving Provisions.*

**185.** All jurisdiction and powers of a Secretary of State under this Act with respect to military convicts or military prisoners, or to prisons other than military prisons, shall in Ireland be vested in the General Prisons Board, and shall be exercised by that board in the manner and subject to the regulations in and under which the jurisdiction and powers of that board are exercised under the General Prisons (Ireland) Act, 1877, and the provisions of this Act with respect to the orders and regulations of the Secretary of State shall apply to the orders and regulations of such board.

**186.** Nothing in this Act shall affect the application of the Naval Discipline Act, 1866,\* or any Order in Council made thereunder, to any of Her Majesty's forces when embarked on board any ship commissioned by Her Majesty, and the auxiliary forces shall be deemed to be part of Her Majesty's forces within the meaning of that Act.

#### *Definitions.*

**187.** This Act shall apply to the Channel Islands and the Isle of Man in like manner as if they were part of the United Kingdom, subject to the following modifications:

- (1.) The provisions of this Act relating to billeting and the impressment of carriages shall not extend to the Channel Islands and the Isle of Man :
- (2.) For the purposes of the provisions of this Act relating to the execution of sentences of penal servitude or imprisonment, and to prisons, the Channel Islands and the Isle of Man shall be deemed to be colonies, and any sentence of penal servitude or imprisonment passed in any of those islands shall be deemed to have been passed in a colony :

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\* The Naval Discipline Act, 1866, sec. 88. Her Majesty's land forces when embarked on board any of Her Majesty's ships, shall be subject to the provisions of this Act, to such extent and under such regulations as Her Majesty, Her heirs and successors, by any Order or Orders in Council, shall at any time or times direct.

- (3.) For the purposes of the provisions of this Act relating to the auxiliary forces the Channel Islands shall be deemed to be colonies:
- (4.) For the purposes of the provisions of this Act relating to the militia the Isle of Man shall be deemed to be a colony.

**188.** Where a person subject to military law is on board a ship, this Act shall apply until he arrives at the port of disembarkation in like manner as if he and the officers in command of him were on land at the place at which he embarked on board the said ship, subject to this proviso, that, if he is tried and sentenced while so on board ship, any finding and sentence, so far as not confirmed and executed on board ship, may be confirmed and executed in like manner as if such person had been tried at the port of disembarkation.

**189. (1.)** In this Act, if not inconsistent with the context, the expression "on active service" as applied to a person subject to military law means whenever he is attached to or forms part of a force which is engaged in operations against the enemy or is engaged in military operations in a country or place wholly or partly occupied by an enemy, or is in military occupation of any foreign country.

(2.) Where the governor of a colony in which any of Her Majesty's forces are serving, or if the forces are serving out of Her Majesty's dominions, the general officer commanding such forces, declares at any time or times that, by reason of the imminence of active service or of the recent existence of active service, it is necessary for the public service that the forces in colony or under his command, as the case may be, should be temporarily subject to this Act, as if they were on active service, then, on the publication in general orders of any such declaration, the forces to which the declaration applies shall be deemed to be on active service for the period mentioned in the declaration, so that the period mentioned in any one declaration do not exceed three months from the date thereof.

(3.) If at any time during the said period the governor or general officer for the time being is of opinion that the necessity continues he may from time to time renew such declaration for another period not exceeding three months, and such renewal shall be published and have effect as the original declaration, and if he is of opinion that the said necessity has ceased, he shall state such opinion, and on the publication in general orders of such statement, the forces to which the declaration applies shall cease to be deemed to be on active service.

(4.) Every such declaration, renewal of declaration, and statement by the governor of a colony shall be made by proclamation published in the official gazette of the colony, and it shall be the duty of every governor or general officer making a declaration or renewal of a declaration under this section, if he has the means of direct telegraphic communication with a Secretary of State, to obtain the previous consent of the Secretary of State to such declaration or renewal, and in any other case to report the same with the utmost practicable speed to the Secretary of State.

(5.) The Secretary of State may, if he thinks fit, annul a declaration or renewal purporting to be made in pursuance of this section, without prejudice to anything done by virtue thereof before the date at which the annulment takes effect, and until that date any such declaration or

renewal shall be deemed to have been duly made in accordance with this section, and shall have full effect.

**190.** In this Act, if not inconsistent with the context, the following expressions have the meanings hereinafter respectively assigned to them; that is to say,

- (1.) The expression "Secretary of State" means one of Her Majesty's Principal Secretaries of State :
- (2.) The expression "Lord Lieutenant of Ireland" includes the lords justices or other chief governor or governors of Ireland :
- (3.) The expression "Commander-in-Chief" means the field-marshal or other officer commanding in chief Her Majesty's forces for the time being :
- (4.) The expression "officer" means an officer commissioned or in pay as an officer in Her Majesty's forces, or any arm, branch, or part thereof; it also includes a person who, by virtue of his commission, is appointed to any department or corps of Her Majesty's forces, or of any arm, branch, or part thereof; it also includes a person, whether retired or not, who, by virtue of his commission or otherwise, is legally entitled to the style and rank of an officer of Her Majesty's said forces, or of any arm, branch, or part thereof:  
Warrant and other officers holding honorary commissions are officers within the meaning of this Act, subject to the exceptions in this Act mentioned :
- (5.) The expression "non-commissioned officer" includes an acting non-commissioned officer, and includes an army schoolmaster when not a warrant officer, but save as is in this Act mentioned does not include a warrant officer not holding an honorary commission :
- (6.) The expression "soldier" does not include an officer as defined by this Act, but, with the modifications in this Act contained in relation to warrant officers and non-commissioned officers, does include a warrant officer not having an honorary commission and a non-commissioned officer, and every person subject to military law during the time that he is so subject:
- (7.) The expression "superior officer," when used in relation to a soldier, includes a warrant officer not holding an honorary commission, and also includes a non-commissioned officer as above defined:
- (8.) The expressions "regular forces" and "Her Majesty's regular forces" mean officers and soldiers who by their commission, terms of enlistment, or otherwise, are liable to render continuously for a term military service to Her Majesty in any part of the world, including, subject to the modifications in this Act mentioned, the Royal Marines and Her Majesty's Indian forces, and the Royal Malta Fencible Artillery, and subject to this qualification, that when the reserve forces are subject to military law such forces become during the period of their being so subject part of the regular forces :
- (9.) The expression "reserve forces" means the army reserve force and the militia reserve force :
- (10.) The expression "the army reserve force" means the reserve force established under the Reserve Force Act, 1867, and any Act amending the same :
- (11.) The expression "the militia reserve force" means the men en-

- listed from time to time under the Militia Reserve Act, 1867, and any Act amending the same :
- (12.) The expression "auxiliary forces" means the militia, the yeomanry, and the volunteers :
- (13.) The expression "militia" includes the general and the local militia :
- (14.) The expression "volunteers and volunteer forces" includes the Honorable Artillery Company of London :
- (15.) The expression "corps"—
- (A.) In the case of Her Majesty's regular forces—
- (i.) Means any such military body, whether known as a territorial regiment or by any different name, as may be from time to time declared by Royal warrant to be a corps for the purpose of this Act, and is a body formed by Her Majesty, and either consisting of associated battalions of the regular and auxiliary forces, or consisting wholly of a battalion or battalions of the regular forces, and in either case with or without the whole or any part of the permanent staff of any of the auxiliary forces not included in such military body; and
  - (ii.) Means the Royal Marine forces, in this Act referred to as the Royal Marines; and also
  - (iii.) Means the Army Service Corps, the Army Hospital Corps, and any other portion of Her Majesty's regular forces, by whatever name called, which is declared by Royal warrant to be a corps for the purposes of this Act; and also
  - (iv.) Means any other portion of Her Majesty's regular forces employed on any service and not attached to any corps as above defined;
  - (v.) And any reference in Part II of this Act to a corps of the regular forces shall be deemed to refer to any such military body as is hereinbefore defined to form a corps; and
- (B.) In the case of Her Majesty's auxiliary forces—
- (i.) Means any such military body, whether known as a territorial regiment or by any different name, as may be from time to time declared by Royal warrant to be a corps for the purposes of this Act, and is a body formed by Her Majesty, and either consisting of associated battalions of the regular and auxiliary forces, or consisting wholly of a battalion or battalions of the auxiliary forces, and either inclusive or exclusive of the whole or any part of the permanent staff of any part of the auxiliary forces; and
  - (ii.) Means any other portion of Her Majesty's auxiliary forces employed in any service, and not attached to any corps as above defined :
- (16.) The expression "battalion" in the application of this Act to cavalry, artillery, or engineers shall be construed to mean regiment, brigade, or other body into which Her Majesty may have been pleased to divide such cavalry, artillery or engineers :
- (17.) The expression "regimental" means connected with a corps, or with any battalion or other subdivision of a corps :
- (18.) The expression "military decoration" means any medal, clasp, good-conduct badge, or decoration :
- (19.) The expression "military reward" means any gratuity or an-



- nulty for long service or good conduct; it also includes any good-conduct pay or pension and any other military pecuniary reward :
- (20.) The expression "enemy" includes all armed mutineers, armed rebels, armed rioters, and pirates :
- (21.) The expression "India" means any territories the government of which is vested in Her Majesty by or in pursuance of the Act of the session of the twenty-first and twenty-second years of the reign of Her present Majesty, chapter one hundred and six, intituled "An Act for the better government of India," and the Acts amending the same, and also any territories in India under the dominion of any native prince or princes :
- (22.) The expression "native of India" means a person triable and punishable under Indian military law as defined by this Act :
- (23.) The expression "colony" means for the purposes of this Act Cyprus and any part of Her Majesty's dominions, exclusive of the United Kingdom, the Channel Islands, and the Isle of Man, and India, and all territories and places being part of Her Majesty's dominions, which are under one legislature shall be deemed for the purposes of this Act to constitute one colony; and where there are local legislatures as well as a central legislature the expression "legislature" means the central legislature only :
- (24.) The expression "foreign country" means any place which is not situate in the United Kingdom, a colony, or India, as above defined and is not on the high seas :
- (25.) The expression "beyond the seas" means out of the United Kingdom, the Channel Islands, and Isle of Man; and the expression "station beyond the seas" includes any place where any of Her Majesty's forces are serving out of the United Kingdom, the Channel Islands, and Isle of Man :
- (26.) The expression "governor general" in its application to India means the Governor General of India in Council :
- (27.) The expression "governor" as respects "the presidency of Bengal" means the Governor General of India in Council, and as respects the presidencies of Madras and Bombay means the Governor in Council of the presidency, and in its application to a colony includes the lieutenant-governor or other officer administering the government of the colony :
- (28.) The expression "oath" and "swear," and other expressions relating thereto, include affirmation or declaration, affirm or declare, and expressions relating thereto, in cases where an affirmation or declaration is by law allowed instead of an oath :
- (29.) The expression "superior court," in the United Kingdom, means Her Majesty's High Court of Justice in England, the Court of Session in Scotland, and Her Majesty's High Court of Justice at Dublin :
- (30.) The expression "supreme court" means, as regards India, any high court or any chief court; and the expression "court of superior jurisdiction," as regards a colony, means a court exercising in that colony the like authority as the High Court of Justice in England :
- (31.) The expression "civil court" means, with respect to any crime or offence, a court of ordinary criminal jurisdiction, and includes a court of summary jurisdiction :

- (32.) The expression "prescribed" means prescribed by any rules of procedure made in pursuance of this Act :
- (33.) The expression "misdemeanor," as far as regards Scotland, means a crime or offence, and so far as regards India, means a crime punishable by fine and rigorous or simple imprisonment at the discretion of the court :
- (34.) The expression "Summary Jurisdiction Acts"—
  - (a.) As regards England, has the same meaning as in the Summary Jurisdiction Act, 1879;
  - (b.) As regards Scotland, means the Summary Procedure Act, 1864, and any Acts amending the same; and
  - (c.) As regards Ireland, means within the police district of Dublin Metropolis, the Acts regulating the powers and duties of justices of the peace for such district, or of the police of such district; and elsewhere in Ireland, the Petty Sessions (Ireland) Act, 1851, and any Act amending the same :
- (35.) The expression "court of summary jurisdiction"—
  - (a.) As regards England, has the same meaning as in the Summary Jurisdiction Acts, 1879; and
  - (b.) As regards Ireland, means any justice or justices of the peace, police magistrate, stipendiary or other magistrate, or officer, by whatever name called, to whom jurisdiction is given by the Summary Jurisdiction Acts or any Acts therein referred to; and
  - (c.) As regards Scotland, means the sheriff or sheriff substitute, or any two justices of the peace sitting in open court; or any magistrate or magistrates to whom jurisdiction is given by the Summary Procedure (Scotland) Act, 1864; and
  - (d.) As regards India, a colony, the Channel Islands and Isle of Man, means the court, justices, or magistrates who exercise jurisdiction in the like cases to those in which the Summary Jurisdiction Acts are applicable:
- (36.) The expression "court of law" includes a court of summary jurisdiction:
- (37.) The expression "county court judge" includes—
  - (a.) In the case of Scotland, the sheriff or sheriff substitute; and
  - (b.) In the case of Ireland, the judge of the Civil Bill Court :
- (38.) The expression "constable" includes a high constable and a commissioner, inspector, or other officer of police :
- (39.) The expression "police authority" means the commissioner, commissioners, justices, watch committee, or other authority having the control of a police force :
- (40.) The expression "horse" includes a mule, and the provisions of this Act shall apply to any beast of whatever description, used for burden or draught or for carrying persons in like manner as if such beast were included in the expression "horse."

## Part VI.—Commencement and Application of Act and Repeal.

**191.** (1.) This Act shall come into force in every place on the day fixed for the commencement in that place of the Regulation of the

Forces Act, 1881, and shall continue in force as if a reference to this Act were substituted for the reference to the Army Discipline and Regulation Act, 1879, in the Army Discipline and Regulation (Annual) Act, 1881, and that Act shall be construed accordingly.

(2.) Any warrant, order, rule, or regulation under this Act, may be made at any time after the passing thereof, so that the same do not take effect until the commencement thereof.

(3.) Any reference in any Act, regulation, rule, order, warrant, charge, or document, to the Army Discipline and Regulation Act, 1879, or any enactment repealed by this Act, shall be construed to refer to this Act and to the corresponding enactment of this Act.

**192.** This Act, while in force, shall apply to all soldiers whether enlisted before or after the commencement of this Act, in like manner as if they were enlisted under this Act, subject as follows:

- (1.) A soldier enlisted before the commencement of this Act may, when on service beyond the seas, be detained in army service after the time at which he would otherwise be entitled to be transferred to the reserve by the same authority and for the same period by and for which he may be detained under this Act while a state of war exists.
- (2.) In the case of soldiers enlisted or reëngaged before the commencement of the Army Discipline and Regulation Act, 1879, who have not consented to the application to them of the provisions of Part Two of that Act, Part Two of this Act shall nevertheless, so far as is consistent with the tenor thereof, apply to such soldiers (in this section referred to as old soldiers) but subject to the exceptions provided by this section.
- (3.) The following provisions, namely,—
  - (a.) The whole of section seventy-nine (which section relates to reckoning and forfeiture of service);
  - (b.) So much of section eighty-seven as allows a soldier to be detained in service otherwise than while a state of war exists or while he is on service beyond the seas;
  - (c.) So much of section eighty-eight as relates to any person continuing in army service for a period during which his service may be prolonged; and
  - (d.) The whole of section eighty-nine (which section relates to the power to transfer a soldier to the reserve before the expiration of his term of army service),
 shall not apply without his consent to any such old soldier.
- (4.) Any reëngagement entered into by a soldier at any time since the commencement of the Army Discipline and Regulation Act, 1879, shall be deemed to be a consent by him to the application to him of the above-named provisions, and any old soldier who, after the commencement of this Act, extends his army service for all or any part of the residue of the unexpired term of his original enlistment, or gives notice to his commanding officer of his desire to continue in Her Majesty's service, shall be deemed to have consented to the application to him of the above-named provisions.
- (5.) For the purpose of discharge or of transfer to the reserve, the service of any old soldier, to whom section seventy-nine of this Act does not apply, shall be reckoned in accordance with the enact-

ments in accordance with which it would have been reckoned if the Army Acts, 1879 and 1881, and this Act had not passed:

Provided that such service may with the consent of the soldier and the approval of the competent military authority as defined by Part Two of this Act be reckoned from the date of his attestation without any deduction on account of age, imprisonment, desertion, absence without leave, or otherwise, or without deduction on account of any one or more of such matters.

- (6.) Any old soldier shall not be liable to be detained in service, or have his service prolonged without his consent, further or otherwise than he would have been liable to if the Regulation of the Forces Act, 1881, and this Act had not passed.
- (7.) Nothing in sub-sections four and five of section eighty-three of this Act, shall extend without his consent to any soldier who enlisted on or after the twentieth day of June one thousand eight hundred and sixty-seven, and before the ninth day of August one thousand eight hundred and seventy, and who has not reengaged.
- (8.) Where a man was enlisted before the commencement of this Act, nothing in this Act shall require him, without his consent, to serve in or to be appointed, transferred, posted, or attached to any military body otherwise than he might have been if this Act had not passed, or to serve for any longer period than that for which he was, before the commencement of this Act, liable to serve.

**198.** The Acts specified in the Fifth Schedule to this Act are hereby repealed as from the commencement of that Act to the extent in the third column of that Schedule mentioned.

Provided that—

- (a.) The said repeal shall not affect anything done or suffered, or any rights or liabilities acquired or accrued before the commencement of this Act, and any proceedings for carrying into effect anything commenced or done before the commencement of this Act may be carried on and completed as if this Act had not passed.
- (b.) All rules, regulations, warrants, orders, and documents made or issued in pursuance or for the purposes of the Acts repealed shall continue as if made or issued in pursuance or for the purposes of this Act.
- (c.) Where in any place before the commencement of this Act a court-martial has been convened for the trial of an offender, such trial may be carried on, and the offender may be sentenced and punished, in the same manner in all respects as if this Act had not passed.
- (d.) Subject as aforesaid, every offence committed against the Army Discipline and Regulation Act, 1879, may be tried and punished in like manner as if it had been committed against this Act; so, however, that a person shall not be subject to any greater punishment for such offence than he is subject to before the commencement of this Act.
- (e.) Subject as aforesaid, this Act shall apply to the conviction of a person tried under any Act hereby repealed as if he had been convicted under this Act, and every sentence imposed under any Act hereby repealed may, after the commencement of this Act, be car-

ried into effect in the same manner in all respects as if it had been imposed under this Act.

(f.) So much of the Army Discipline and Regulation Act, 1879, as is unrepealed, shall continue in force and be construed as if it were part of this Act.

### FIRST SCHEDULE.

*Form of Oath to be taken by a Master whose Apprentice has absconded, and of Justice's Certificate annexed.*

I A. B., of ..... do make oath, that I am by trade a ..... and that ..... was bound to serve as an apprentice to me in the said trade, by indenture dated the ..... day of ..... for the term of ..... years; and that the said ..... did on or about the ..... day of ..... abscond and quit my service without my consent; and that to the best of my knowledge and belief the said ..... is aged about ..... years. Witness my hand at ..... the ..... day of ..... one thousand eight hundred and .....

(Signed)

A. B.

I hereby certify that the foregoing affidavit was sworn before me at ..... this ..... day of ..... one thousand eight hundred and .....

(Signed)

C. D.,

Justice of the Peace for .....

*Form of Oath to be taken by a Master whose indentured Labourer in India or a Colony has absconded, and of Justice's Certificate annexed.*

I ..... of ..... do make oath, that ..... was bound to me to serve as an indentured labourer by indenture dated the ..... day of ..... for the term of ..... years, and that the said ..... did on or about the ..... day of ..... abscond and quit my service without my consent. Witness my hand at ..... the ..... day of ..... one thousand eight hundred and .....

(Signed)

A. B.

I hereby certify, &c. [as for apprentice.]

## SECOND SCHEDULE.

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BILLETING.

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## PART I.

*Accommodation to be furnished by Keeper of Victualling House.*

A keeper of a victualling house on whom any officer, soldier, or horse is billeted—

- (1.) Shall furnish the officer and soldier with lodging and attendance; and
- (2.) Shall if required by the soldier, furnish him for every day of the march and for not more than two days, if the soldier is halted at an intermediate place on the march for more than two days, and on the day of arrival at the place of final destination, with one hot meal on each day, the meal to consist of such quantities of diet and small beer as may be from time to time fixed by Her Majesty's regulations, not exceeding one pound and a quarter of meat previous to being dressed, one pound of bread, one pound of potatoes or other vegetables, and two pints of small beer, and vinegar, salt, and pepper; and
- (3.) When the soldier is not so entitled to be furnished with a hot meal, shall furnish the soldier with candles, vinegar, and salt, and allow him the use of fire, and the necessary utensils for dressing and eating his meat; and
- (4.) Shall furnish stable room and ten pounds of oats, twelve pounds of hay, and eight pounds of straw on every day for each horse.

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PART II.*Regulations as to Billets.*

- (1.) When the troops are on the march the billets given shall, except in a case of necessity or of an order of a justice of the peace, be upon victualling houses in or within one mile from the place mentioned in the route:
- (2.) Care shall always be taken that the billets be made out to the less distant victualling houses in which suitable accommodation can be found before billets are made out for more distant victualling houses:
- (3.) Except in case of necessity, where horses are billeted each man and his horse shall be billeted on the same victualling house:
- (4.) Except in case of necessity, one soldier at least shall be billeted where there are one or two horses, and two soldiers at least where there are four horses, and so in proportion for a greater number:
- (5.) Except in case of necessity, a soldier and his horse shall not be

billeted at a greater distance from each other than one hundred yards :

- (6.) When any soldiers with their horses are billeted upon the keeper of a victualling house who has no stables, on the written requisition of the commanding officer present the constable shall billet the soldiers and their horses, or the horses only, on the keeper of some other victualling house who has stables, and a court of summary jurisdiction upon complaint by the keeper of the last-mentioned victualling house may order a proper allowance to be paid to him by the keeper of the victualling house relieved :
- (7.) An officer demanding billets may allot the billets among the soldiers under his command and their horses as he thinks most expedient for the public service, and may from time to time vary such allotment :
- (8.) The commanding officer may, where it is practicable, require that not less than two men shall be billeted in one house.

### THIRD SCHEDULE.

#### IMPRESSMENT OF CARRIAGES.

*Table of Rates of Payment for Carriages and Animals.*

Carriages and Animals.	Rate per Mile.
<i>In Great Britain.</i>	
A waggon with four or more horses, or a wain with six oxen, or four oxen, and two horses.	One shilling.
A waggon with narrow wheels, or a cart with four horses, carrying not less than fifteen hundredweight.	Ninepence.
Any other cart or carriage, with less than four horses, and not carrying fifteen hundredweight.	Sixpence.
<i>In Ireland.</i>	
For every hundredweight loaded on any wheeled vehicle.	One halfpenny.

The mileage when reckoned for the purposes of payment shall include the distance from home to the place of starting, and the distance home from the place of discharge.

#### REGULATIONS AS TO CARRIAGES AND ANIMALS.

(1.) Where the whole distance for which a carriage is furnished is under one mile the payment shall be for a full mile.

(2.) In Ireland, the minimum sum payable for a car shall be threepence, and for a dray, sixpence per mile.

(3.) In Great Britain, when the day's march exceeds fifteen miles, the justice granting his warrant may fix a further reasonable compensation for every mile travelled not exceeding, in respect of each mile, the rate of hire authorized to be charged by this Act; when any such additional compensation is granted, the justice shall insert in his own hand in the warrant the amount thereof.

(4.) In Ireland the payment shall be at the same rate for each hundredweight in excess of the amount which the carriage is liable under this schedule to carry.

(5.) A carriage shall not be required to travel more than twenty-five miles.

(6.) A carriage shall not, except in case of pressing emergency, be required to travel more than one day's march prescribed in the route.

(7.) In Great Britain a carriage shall not be required to carry more than thirty hundredweight.

(8.) In Ireland a carriage shall not be required to carry, if a car, more than six hundredweight, and if a dray more than twelve hundredweight.

(9.) The load for each carriage shall, if required, at the expense of the owner of the carriage, and if the same can be done within a reasonable time without hindrance to Her Majesty's service, be weighed before it is placed in the carriage.



## FOURTH SCHEDULE.

*Form of Descriptive Return.*

DESCRIPTIVE RETURN of ..... who\* ..... at .....  
 on the ..... day of ..... , and was committed to  
 confinement at ..... on the ..... day of .....  
 as a deserter [*or* absentee without leave] from the ..... Bn.  
 of the ..... Regiment of .....

\* After the word "who," to be inserted either the words "was apprehended,"  
 or "surrendered himself," as the case may be.

Age .....	
Height .....	Feet. Inches.
Complexion .....	
Hair .....	
Eyes .....	
Marks .....	
In uniform or plain clothes .....	
Probable date and place of attestation .....	
Probable date of desertion or beginning of absence, and from what place .....	
Name, occupation, and address of the person by whom or through whose means the deserter, [ <i>or</i> absentee without leave] was apprehended and secured. † .....	
Particulars in the evidence on which the prisoner is committed, and showing whether he surren- dered or was apprehended, and in what manner and upon what grounds. The fullest possible details to be given .....	

I do hereby certify, that the pris-  
 oner has been duly examined be-  
 fore me as to the circumstances  
 herein stated, and has declared in  
 my presence that he † .....

..... the  
 before mentioned corps, and I rec-  
 ommend § ..... for  
 a reward of ..... s.

..... Signature } of commit-  
 ..... Residence } ting magis-  
 ..... Post Town } trate.

..... Signature of prisoner.

..... Signature of informant.

† It is important for the public service, and for the interest of the deserter or  
 absentee without leave, that this part of the return should be accurately filled  
 up, and the details should be inserted by the justice in his own handwriting, or,  
 under his direction, by his clerk.

‡ Insert *is* or *is not a deserter* or *absentee without leave*, from or belongs or does  
 not belong to, as the case may be.

§ The justice will insert the name of the person to whom the reward is due,  
 and the amount [5s., 10s., 15s., or 20s.] which, in his opinion, should be granted  
 in this particular case.

Or where the prisoner confessed, and evidence of the truth or falsehood of such confession is not then forthcoming :

I hereby certify that the above-named prisoner confessed to the circumstances above stated, but that evidence of the truth or falsehood of such confession is not forthcoming, and that the case was adjourned until the ..... day of ..... for the purpose of obtaining such evidence from a Secretary of State.

..... *Signature.*

..... *Residence.*

..... *Post Town.*

## FIFTH SCHEDULE.

### ACTS REPEALED.

Section and Chapter.	Title or Short Title.	Extent of Repeal.
47 Geo. 3, sess. 2, c. 25.	An Act for the more convenient payment of half pay and pensions and other allowances to officers and widows of officers, and the persons upon the Compassionate List.	So much as is unrepealed.
42 & 43 Vict., c. 32.....	The Army Discipline and Regulation (Commencement) Act, 1879.	Section three, section seven, section eight, and the schedule.
42 & 43 Vict., c. 33.....	The Army Discipline and Regulation Act, 1879.	The whole Act, with the exception of section one hundred and seventy-seven.
44 & 45 Vict., c. 9.....	The Army Discipline and Regulation (Annual) Act, 1881.	Sections four to seven, both inclusive.
44 & 45 Vict., c. 57.....	The Regulation of the Forces Act, 1881.	Part II, with the exception of so much of sections thirty-eight and thirty-nine as relates to the auxiliary forces, and of section forty-five. In Part III, section fifty.

## RULES OF PROCEDURE.

## PART I.—ARREST AND TRIAL.

*Arrest.*

1. The special report of the necessity for further delay in ordering a court-martial to assemble for the trial of an officer or soldier required under section 45 of the Army Act, 1881, shall be made by means of a letter from the commanding officer of such officer or soldier reporting such necessity to the general or other officer commanding the district, garrison, or station.

*Power of Commanding Officer.*

2. Every commanding officer will take care that a person under his command, when charged with an offence, is not detained in custody for more than forty-eight hours after the committal of such person into custody is reported to him, without the charge being investigated (*a*), unless such investigation seems to him impracticable with due regard to the public service. Every case of detention beyond a period of forty-eight hours, and the reason thereof, shall be reported by the commanding officer to the general or other officer commanding the district, garrison, or station.

3. (A.) Every charge against a soldier will be heard in the presence of the accused. The accused will have full liberty to cross-examine any witness against him, and to call any witnesses and make any statement in his defence.

(B.) If on a charge of absence without leave exceeding seven days, the accused demands that the evidence against him be taken on oath (*b*), the oath will be administered to each witness by the investigating officer in the same form as provided for a court-martial (*c*), or, in the case of a witness allowed before a court-martial to make a solemn declaration (*d*), the like solemn declaration will be made before the investigating officer (*c*).

4. (A.) The commanding officer will dismiss a charge brought before him if in his opinion the evidence does not show that some offence under the Army Act, 1881, has been committed, or if, in his discretion, he thinks the charge ought not to proceed with (*e*).

(B.) At the conclusion of the hearing of a charge, if the commanding officer is of opinion that the charge ought to be proceeded with, he shall, without unnecessary delay, dispose of the case, either summarily if the accused is a soldier, or whether the accused is or not a soldier, by remanding him for trial by court-martial, or by reference to the proper superior military authority (*f*).

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(a) Army Act, 1881, s. 45. (5.)

(b) Army Act, 1871, s. 46. (6.)

(c) See Rule 80.

(d) Army Act, 1881, s. 52. (4.)

(e) Army Act, 1881, s. 46. (1.)

(f) Army Act, 1881, s. 46. (1.)

(C.) If the accused is remanded for trial by court-martial, the commanding officer shall without unnecessary delay either issue an order for the assembly of a court-martial, or apply to the proper military authority to convene a court-martial, as the case requires; this delay and any delay in the reference to superior military authority should not ordinarily exceed thirty-six hours.

**5.** (A.) Where the accused is remanded by his commanding officer for trial by general or district court-martial the evidence of the witnesses who were present before the commanding officer shall be taken down in writing in a narrative form in the presence of the prisoner, who, if there is any variance between the evidence of any witness so taken down and the evidence previously given before the commanding officer, shall be allowed to put questions to the witness with reference to such variance; and such questions with the answers shall be added in writing to the evidence taken down.

(B.) The evidence of each witness when taken down as provided in (A.) shall be read over to him and shall be signed by him, or if he cannot write his name, shall be attested by his mark and witnessed. Any statement of the prisoner material to his defence shall be added in writing.

(C.) The above evidence and the statement, if any, shall be taken down before the commanding officer or such officer as he directs, and if the commanding officer thinks it desirable he may rehear the case and reconsider his decision and dispose of it as provided by Rule 4. (B.)

(D.) The evidence and statement (if any) taken in pursuance of this rule (in these rules referred to as the summary of evidence), or a true copy thereof, shall be laid before the court-martial before whom the prisoner is tried on the assembly of the court.

(E.) A true copy thereof shall, if the case is such as appears to the convening officer to render it desirable, be given to the prisoner gratis, and in any other case, shall, if the prisoner so requests, be given to him on payment of one penny for every seventy-two words; and where the prisoner has not obtained a copy of the summary of evidence the court should permit him to inspect the summary or the copy thereof laid before the court, or may order a copy thereof to be given to the prisoner gratis.

**6.** (A.) The term of imprisonment when awarded by a commanding officer in days shall begin on the day of the award. The term of imprisonment when awarded by a commanding officer in hours, shall begin at the hour when the prisoner is received at the provost prison or the public prison, military or civil, to which he is committed, or if he has not been sooner received into the prison, shall begin on the day after the day of the award at the hour fixed for the commitment and release of prisoners.

(B.) When the commanding officer has once awarded punishment for an offence he cannot afterwards increase that punishment for that offence.

**7.** (A.) A soldier who, in consequence of the summary award of his commanding officer will suffer any deduction from his ordinary pay, shall have the same right to be tried by a district court-martial as if he were ordered by his commanding officer to suffer that deduction.

(B.) If the prisoner will in consequence of the summary award of his commanding officer suffer any deduction from his ordinary pay, or is ordered by the summary award of his commanding officer to suffer imprisonment or to pay a fine, or to suffer any deduction from his ordinary pay, the commanding officer will inform the soldier of his right (a) to be tried by a district court-martial, and will ask him if he wishes to be so tried. If the commanding officer omits to ask the above question, the soldier may at any time on the same day before the hour fixed for the commitment and release of prisoners, claim his right to be tried by a court-martial.

(C.) If the soldier, upon the above question being put to him, or otherwise, claims his right to be tried by a court-martial, the commanding officer will remand him for trial by court-martial: the court, if the soldier demands it, must be a district court-martial, but otherwise may, if the commanding officer thinks fit, be a regimental court-martial.

(D.) Except as mentioned in this rule, a soldier has no right to claim a trial by court-martial instead of submitting to the summary award of his commanding officer, but the commanding officer may, if he thinks proper, vindicate the justice of his award finding the soldier guilty by remanding him for trial by court-martial instead of punishing him summarily, but he must do so before the soldier leaves his presence after the award is made.

8. (A.) Where an officer is charged with an offence under the Army Act, 1881, the investigation shall be held, and the evidence taken in his presence in writing, if he requires it, in the same manner, as nearly as circumstances admit, as is required by Rules 3 and 5 in the case of a soldier.

(B.) Where an officer is ordered for trial by court-martial without any such taking of evidence in his presence, an abstract of the evidence to be adduced shall be delivered to him gratis not less than twenty-four hours before his trial, and shall be laid before the court-martial on its assembly.

#### *Framing Charges.*

9. (A.) A charge-sheet contains the whole issue or issues to be tried by a court-martial at one time.

(B.) A charge means an accusation contained in a charge-sheet that a person amenable to military law has been guilty of an offence.

(C.) A charge-sheet may contain one charge or several charges.

10. Every charge-sheet will begin with the name and description of the person charged, and should state, in the case of an officer, his name, and rank, and corps (if any), and in the case of a soldier, his name, number, rank, and corps (if any), and where he does not at the time of the trial belong to the regular forces, should show by the description of him or directly by an express averment that he is amenable to military law in respect of the offence charged.

11. (A.) Each charge should state one offence only, and in no case should an offence be described in the alternative in the same charge.

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(a) Army Act, 1881, s. 46, (8).

- (B.) Each charge should be divided into two parts—
  - (1.) The statement of the *offence*; and
  - (2.) The statement of the *particulars* of the act, neglect, or omission constituting the offence.
- (C.) The offence should be stated, if not a civil offence, in the words of the Army Act, 1881 (*a*), and if a civil offence, in such words as sufficiently describe that offence, but not necessarily in technical words.
- (D.) The *particulars* should state such circumstances respecting the alleged offence as will enable the accused to know what act, neglect, or omission is intended to be proved against him as such offence.
- (E.) The *particulars* in one charge may be framed wholly or partly by a reference to the particulars in another charge, and in that case so much of the latter particulars as is so referred to shall be deemed to form part of the first-mentioned charge as well as of the other charge.
- (F.) Where it is intended to prove any facts in respect of which any deduction from ordinary pay can be awarded as a consequence of the offence charged, the *particulars* should state those facts.

12. (A.) A charge-sheet shall not be invalid by reason only of any mistake in the name or description of the person charged, if he does not object to the charge-sheet during the trial, and it is not shown that injustice has been done to the person charged.

(B.) In the construction of a charge-sheet or charge, there shall be presumed in favour of supporting the same every proposition, which may reasonably be presumed to be impliedly included, though not expressed, therein.

#### *Prisoner's Preparation for Defence.*

13. A prisoner for whose trial a court-martial has been ordered to assemble shall be afforded proper opportunity of preparing his defence, and shall be allowed free communication with his witnesses and with any friend or legal adviser whom he may wish to consult.

14. (A.) The prisoner before he is arraigned should be informed by an officer of every charge on which he is to be tried; and also that, on his giving the names of any witnesses whom he desires to call in his defence, reasonable steps will be taken for procuring their attendance, and those steps shall be taken accordingly: the interval between his being so informed and his arraignment should not be less, in the case of a regimental court-martial, than eighteen, and in the case of any other court-martial, than twenty-four hours.

(B.) The officer at the time of so informing the prisoner should give the prisoner a copy of the charge-sheet, and, where the prisoner is a soldier, should, if necessary, explain the charge-sheet and charges to him, and should also, if he is illiterate, read the charges to him.

(C.) A list of the names, rank, and corps (if any) of the president and officers who are to form the court, and where officers in waiting are named also of those officers, should, as soon as the president and officers are named, be delivered to the prisoner if he desires it.

(D.) If it appears to the court that the prisoner is liable to be preju-

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(a) See Rule 133 (c.)

dicted by any non-compliance with this rule, the court shall take steps, and if necessary adjourn, to avoid the prisoner being so prejudiced.

**15.** Any number of prisoners may be tried together for an offence charged to have been committed by them collectively, but in such case notice of the intention to try the prisoners together should be given to each prisoner at the time of his being informed of the charge, and any prisoner may claim, either by notice to the authority convening the court, or, when arraigned before the court, by notice to the court, to be tried separately, on the ground that the evidence of one or more of the other prisoners proposed to be tried together with him will be material to his defence; the convening authority or court, if satisfied that such evidence will be material, and if the nature of the charge admits of it, shall allow the claim, and such prisoner shall be tried separately.

#### *Convening of Court-martial.*

**16.** A regimental court-martial shall be ordered to assemble as soon as seems to the convening officer practicable—having regard to Rule 14 (A.)—after the completion of the investigation by the commanding officer into the charge which the court-martial is to try (a).

**17. (A.)** An officer before convening a court-martial should first satisfy himself that the charges to be tried by the court are for offences within the meaning of the Army Act, 1881, and that the evidence justifies a trial on those charges, and if not so satisfied should order the release of the prisoner, or refer the case to superior authority.

**(B.)** He should also satisfy himself that the case is a proper one to be tried by the description of court-martial which he proposes to convene.

**(C.)** If more than fifteen days in the United Kingdom, or more than thirty days elsewhere, elapse between the time when an officer having power to convene a general or district court-martial receives an application for a court-martial and the date at which the case is disposed of, either by the assembly of a general or district court-martial, or otherwise, the officer shall report the case, and the reasons for the delay, to the commander-in-chief.

**(D.)** The officer convening a court-martial shall appoint or detail the officers to form the court, and may also appoint or detail such waiting officers as he thinks expedient.

**(E.)** The officer convening a court-martial shall send to the officer appointed president the original charge-sheet on which the prisoner is to be tried, and the summary or abstract of evidence.

**18. (A.)** If before the prisoner is arraigned the full number of officers detailed are not available to serve, by reason of non-eligibility, disqualification, challenge, or otherwise, the court should ordinarily adjourn for the purpose of fresh members being appointed, and the president should report the circumstances to the convening authority; but if the court are of opinion that in the interests of justice and for the good of the service it is inexpedient so to adjourn, they may, if not reduced in num-

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(a) See Army Act, 1881, s. 47. For Form see Second Appendix, Form No. 3.

ber below the legal minimum (a), proceed, recording their reasons for so doing.

(B.) If the court adjourn for the purpose of the appointment of a new president (b) or of fresh members, whether under these rules or otherwise, the convening officer may, if he thinks fit, convene another court.

**19.** (A.) An officer is not eligible for serving on a court-martial if he is not subject to military law.

(B.) An officer is disqualified for serving on a court-martial on a prisoner if such officer—

- (i.) Is the officer who convened the court; or
- (ii.) Is the prosecutor or a witness for the prosecution; or
- (iii.) Investigated the charges before trial, or was a member of a court of inquiry respecting the matters on which the charges against the prisoner are founded; or
- (iv.) Is the commanding officer of the prisoner or of the corps or battalion to which the prisoner belongs; or
- (v.) Has a personal interest in the case (c).

(C.) An officer is not eligible to serve on a court-martial, unless he has held a commission during not less than the following periods next preceding the day appointed for the assembling of the court; that is to say:—

- (i.) if it is a regimental court-martial, one whole year;
- (ii.) if it is a district court-martial, two whole years;
- (iii.) if it is a general court-martial, three whole years (d).

**20.** (A.) A general or district court-martial shall, as far as seems to the convening officer practicable, be composed of officers of different corps, and in no case shall be composed exclusively of officers of the same regiment of cavalry or the same battalion of infantry, unless the convening officer states in the order convening the court that, in his opinion, other officers are not, having due regard to the public service, available, and also, if he belongs to the same regiment of cavalry or battalion of infantry as the prisoner, that an order to convene a court composed partly of other officers cannot be obtained from superior authority within a reasonable time.

(B.) In the case of a court-martial for the trial of a prisoner belonging to the auxiliary and not to the regular forces, unless the convening officer states in the order convening the court that in his opinion it is not (having due regard to the public service) practicable, two members at least of the court should belong to the auxiliary forces, and one or both of those members of the court should belong to the branch of the auxiliary forces to which the prisoner belongs.

**21.** (A.) In the case of a general court-martial five at least of the members must not be below the rank of captain (e).

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(a) See Army Act, 1881, s. 48. (5).

(b) See Army Act, 1881, ss. 51. (3), 53. (2).

(c) See Army Act, 1881, s. 50 (2) (3). The corps to which an officer belongs does not (except under Rule 20) affect his eligibility to serve on a court-martial. See Army Act, 1881, s. 50 (1).

(d) See Army Act, 1881, s. 48.

(e) See Army Act, 1881, s. 48 (3), (7).



(B.) The members of a court-martial for the trial of an officer shall be of an equal, if not superior, rank to that officer, unless, in the opinion of the convening officer, to be stated in the order convening the court, and to be conclusive, officers of that rank are not, having due regard to the public service, available, and in no case shall an officer under the rank of captain be a member of a court-martial for the trial of a field officer (a).

*Procedure at Trial.—Constitution of Court.*

22. (A.) On the court assembling (b), the order convening the court shall be read, and also the names, rank, and corps of the officers appointed to serve on the court, and it shall be the first duty of the court to satisfy themselves that the court is legally constituted; that is to say,

- (i.) That so far as the court can ascertain, the court has been convened in accordance with the Army Act, 1881, and these Rules (c);
- (ii.) That the court consists of a number of officers not less than the legal minimum (d), and save as mentioned in Rule 18 not less than the number detailed;
- (iii.) That each of the officers so assembled is eligible and not disqualified (e) for serving on that court-martial;
- (iv.) That the president is of the required rank (f) and duly appointed; and
- (v.) In the case of a general court-martial that the officers are of the required rank (g).

(B.) The court should further, if it is a general or district court-martial to which a judge advocate has been appointed, ascertain that the judge advocate is duly appointed, and is not disqualified for acting at that court-martial (h).

(C.) The court, if not satisfied on the above matters, should report their opinion to the convening authority, and may adjourn for that purpose.

23. (A.) The court, when satisfied on the above matters, should satisfy themselves (i) in respect of each charge about to be brought before them,—

- (i.) That it appears to be laid against a person amenable to military law, and to the jurisdiction of the court (j); and
- (ii.) That each charge discloses an offence under the Army Act, 1881, and is framed in accordance with these rules (k), and is so

(a) See Army Act, 1881, s. 48 (3), (7).

(b) For Form see Second Appendix, Form of Proceedings (par. 1).

(c) See Rules 18 to 21.

(d) See Army Act, 1881, s. 48.

(e) See Rule 19.

(f) See Army Act, 1881, ss. 47 (4), 48 (9), 182 (4).

(g) See Rule 21.

(h) See Rule 99 (B.)

(i) See Second Appendix, Form of Proceedings (par 1).

(j) See Army Act, 1881, ss. 47 (5), 48 (6), 182 (1), 184 (1).

(k) See Rules 10 and 11.

explicit as to enable the prisoner readily to understand what he has to answer.

(B.) The court, if not satisfied on the above matters, should report their opinion to the convening authority, and may adjourn for that purpose.

*Procedure at Trial.—Challenge and Swearing.*

**24.** When the court have satisfied themselves as to the above facts the prosecutor, who must be a person subject to military law, should take his place, and the court shall cause the prisoner to be brought before the court (a).

**25.** (A.) The court, upon the prisoner being brought before them, shall ascertain that the court is constituted of officers to whom the prisoner makes no reasonable objection (a) (b).

(B.) The prisoner has no right to object to the prosecutor or judge advocate.

(C.) The prisoner shall state the names of all the officers to whom he objects before any objection is disposed of.

(D.) The prisoner may call any person to give evidence in support of his objection.

(E.) If more than one officer is objected to, the objection to each officer will be disposed of separately, and the objection to the lowest in rank will be disposed of first; and on an objection to an officer, all the other officers present shall vote on the disposal of such objection, notwithstanding that objections have been made to any of those officers.

(F.) When an objection to an officer is allowed, that officer shall forthwith retire and take no further part in the proceedings.

(G.) Where an officer objected to (other than the president) retires and there are any officers in waiting, the vacancy shall be forthwith filled by one of the officers in waiting being directed to serve in lieu of the retiring officer. If there is no officer in waiting available the court will proceed as directed by Rule 18.

(H.) The eligibility, absence of disqualification, and freedom from objection of an officer filling a vacancy, including that of president, will be ascertained by the court as in the case of other officers appointed to serve on the court.

**26.** As soon as the court is constituted with the proper number of officers who are not objected to, or the objections to whom have been overruled, the oath (c) shall be administered to each member of the court as follows (d):

(i.) If there is a judge advocate the oath shall be administered by him, to the president first, and afterwards to the other members of the court:

(ii.) If there is no judge advocate the oath shall be administered by

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(a) See Second Appendix, Form of Proceedings, par. 2.

(b) See Army Act, 1881, s. 51.

(c) See Army Act, 1881, s. 52 (1).

(d) See Second Appendix, Form of Proceedings, par. 2.

the president to the other members of the court, and shall be administered to the president by any member of the court already sworn (a).

**27.** After the members of the court are all sworn (a) an oath shall be administered to the following persons, or to such of them as are present at the court-martial, by the president, or by some other member of the court, or, except in the case of the judge advocate, by the judge advocate, if present, in the following form (b):

(A.) The form of oath for the judge advocate shall be :

"You do swear that you will not, unless it is necessary for the due discharge of your official duties, divulge the sentence of this court-martial until it is duly confirmed ; and that you will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law. So help you God."

(B.) The form of oath for an officer attending for the purpose of instruction shall be :

"You do swear that you will not divulge the sentence of this court-martial until it is duly confirmed ; and that you will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law. So help you God."

(C.) The form of oath for a shorthand writer shall be :

"You do swear that you will truly take down to the best of your power the evidence to be given before this court-martial and such other matters as you may be required, and will when required deliver to the court a true transcript of the same. So help you God."

(D.) The form of oath for an interpreter shall be :

"You do swear that you will to the best of your ability truly interpret and translate, as you shall be required to do, touching the matter before this court-martial. So help you God."

**28.** Where a person is permitted to make a solemn declaration instead of being sworn (c), the form of declaration shall be as follows ; that is to say,

(A.) In the case of the president or other member of the court—

I do solemnly promise and declare that I will well and truly try the prisoner before the court according to the evidence, and that I will duly administer justice according to the Army Act now in force, without partiality, favour, or affection; and I do further solemnly promise and declare that I will not divulge the sentence of the court until it is duly confirmed; and further that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

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(a) A solemn declaration may be substituted under the circumstances specified in Army Act, 1881, s. 52. See Rule 28.

(b) See Army Act, 1881, s. 52 (2).

(c) A solemn declaration may be substituted under the circumstances specified in Army Act, 1881, s. 52 (4).

(B.) In the case of the judge advocate—

I do solemnly promise and declare that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

(C.) In the case of an officer attending for the purpose of instruction—

I do solemnly promise and declare that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

(D.) In the case of a shorthand writer—

I do solemnly promise and declare that I will truly take down to the best of my power the evidence to be given before this court-martial, and when required will deliver to the court a true transcript of the same.

(E.) In the case of an interpreter—

I do solemnly promise and declare that I will to the best of my ability faithfully and truly interpret and translate as I shall be required to do touching the matter now before this court-martial.

(F.) The declaration shall be taken before some person authorized by these rules to administer the oath.

**29.** Where the oath is administered to or the declaration taken by the members of a court who are about to try several prisoners, the plural shall be substituted for the singular wherever required.

**30.** An oath may be administered in such form and with such ceremonies as the person to be sworn declares to be, according to his religion, binding on his conscience, and the words "You do swear" and "So help me God" may be omitted or varied for the purpose.

*Prosecution, Defence, and Summing up.*

**31.** (A.) After the members of the court and other persons are sworn as above mentioned (a) the prisoner shall be arraigned on the charges against him (b).

(B.) The charges upon which the prisoner is arraigned will be read to him, and he will be required to plead separately to each charge.

**32.** The prisoner, when required to plead to any charge, may object to the charge (b) on the ground that it does not disclose an offence under the Army Act, 1881, or is not in accordance with these rules.

**33.** (A.) At any time during the trial if it appears to the court that there is any mistake in the name or description of the prisoner in the charge-sheet, the court may amend the charge-sheet so as to correct that mistake.

(B.) If on the trial of any charge it appears to the court, at any time

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(a) See Rules 26 to 28.

(b) See Second Appendix, Form of Proceedings, par. 3.

before they have begun to examine the witnesses, that in the interests of justice any addition to or omission from or alteration in the charge is required, they may report their opinion to the convening authority, and may adjourn, and the convening authority may either direct a new trial to be commenced, or amend the charge, and order the trial to proceed with such amended charge after due notice to the prisoner.

**34.** (A.) The prisoner, before pleading to a charge, may offer a special plea to the general jurisdiction of the court (a), and if he does so, and the court consider that anything stated in such plea shows that the court have not jurisdiction, they shall receive any evidence offered in support, together with any evidence offered by the prosecutor in disproof or qualification thereof, and any address by the prisoner and reply by the prosecutor in reference thereto.

(B.) If the court overrule the special plea they should proceed with the trial.

(C.) If the court allow the special plea, they shall record their decision and the reasons for it, and report it to the convening authority and adjourn; such decision shall not require any confirmation, and the convening authority shall either forthwith convene another court for the trial of the prisoner or order the prisoner to be released.

(D.) If the court are in doubt as to the validity of the plea they may refer the matter to the convening authority, and may adjourn for that purpose, or may record a special decision with respect to such plea and proceed with the trial.

**35.** (A.) If no special plea to the general jurisdiction of the court is offered, or if such plea, being offered, is overruled, the prisoner's plea—"Guilty" or "Not guilty" (or if he refuses to plead, or does not plead intelligibly either one or the other, a plea of "Not guilty")—shall be recorded on each charge (a).

(B.) Before recording a plea of "Guilty" the court should ascertain that the prisoner understands the nature of the charge to which he has pleaded "Guilty," and should inform him of the general effect of that plea, and in particular of the difference in the procedure which will be made by that plea.

**36.** (A.) If the plea of guilty is recorded on a charge, the court before the finding shall (b) receive any statement which the prisoner desires to make in reference to the charge, and if from such statement or otherwise it appears to the court that the prisoner did not understand the effect of his plea of guilty, the court shall alter the record and enter a plea of not guilty, and proceed with the trial accordingly, but if the plea of guilty is not so altered, the court will find the prisoner guilty on the said charge. The court should receive the said statement and record the said finding when the findings on the other charges in the same charge-sheet are recorded.

(B.) If there are other charges in the same charge-sheet to which the plea recorded is "Not guilty," the trial will proceed with respect to those other charges, but if the other charges are alternative charges

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(a) See Second Appendix, Form of Proceedings, par. 3.

(b) See Second Appendix, Form of Proceedings, par. 4.

the court may proceed with respect to all the charges as if he had not pleaded guilty to any charge, or may, instead of trying them, enter a finding of "Not guilty" on each alternative charge to which the prisoner has not pleaded guilty.

(C.) If a plea of "Guilty" is recorded and the trial does not proceed on any other charges, a general or district court-martial, after recording the finding on the plea of "Guilty," should (a) read the summary of evidence or abstract of evidence and annex it to the proceedings, and if there is no summary or abstract of evidence, should proceed as directed by (E.).

(D.) After the summary or abstract of evidence is read, the prisoner may call witnesses as to his character, and may make a statement in mitigation of punishment, but no other address will be allowed.

(E.) If a plea of "Guilty" is recorded and the trial does not proceed on any other charges a regimental court-martial, after recording the finding on the plea of "Guilty," should (a) take and record sufficient evidence to enable them to determine the sentence and the confirming officer to know all the circumstances connected with the offence. This evidence will be taken in like manner as is directed by these rules in the case of a plea of "Not guilty" (b) (c). The prisoner may call witnesses as to his character, and may make a statement in mitigation of punishment, but no other address will be allowed.

(F.) Where the prisoner at any court-martial (general, district, or regimental) states anything in mitigation of punishment which, in the opinion of the court, requires to be proved, and would, if proved, affect the amount of punishment, the court may permit the prisoner to call witnesses to prove the same.

**37.** The prisoner may, if he thinks fit, at any time during the trial withdraw his plea of "Not guilty," and plead "Guilty," and in such case the court will at once, subject to a compliance with Rule 35 (B.), record a plea of "Guilty," and shall, so far as is necessary, proceed in manner directed by Rule 36.

**38.** After the plea of "Not guilty" to any charge is recorded the trial will proceed as follows : (b).

(A.) The prosecutor may, if he desires, make an opening address.

(B.) The evidence for the prosecution shall then be taken.

(C.) If it should be necessary for the prosecutor to give evidence for the prosecution he should give it after the delivery of his address, and he must be sworn, and give his evidence in detail.

(D.) He may be cross-examined by the prisoner, and afterwards may make any statement which might be made by a witness on re-examination.

**39.** (1.) At the close of the evidence for the prosecution, the prisoner will be asked if he intends to call any witnesses other than witnesses as to character (b).

(2.) If the prisoner does not state that he intends to call any wit-

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(a) See Second Appendix, Form of Proceedings, par. 4.

(b) See Second Appendix, Form of Proceedings, par. 5.

(c) See Rule 38.

nesses other than witnesses as to character, the procedure will be as follows (a):—

- (A.) The prosecutor may address the court a second time, for the purpose of summing up the evidence for the prosecution.
- (B.) The prisoner will be asked if he has anything to say in his defence, and may address the court in his defence.
- (C.) The prisoner may call witnesses as to his character.
- (D.) The prosecutor may produce, in reply to the witnesses as to character, proof of former convictions and entries in the defaulters' book, but he may not again address the court.

**40.** If the prisoner states that he intends to call witnesses other than witnesses as to character the procedure will be as follows (b):

- (A.) The prisoner will be asked if he has anything to say in his defence and may address the court in his defence.
- (B.) The prisoner may call his witnesses, including witnesses as to character.
- (C.) After the evidence of all the witnesses for the defence has been taken the prisoner may again address the court, and the time at which such second address is allowed is in these rules referred to as the time for the second address of the prisoner.
- (D.) The prosecutor will be entitled to address the court in reply.

**41.** (A.) The judge advocate, if any, will, unless he and the court think a summing-up unnecessary, sum up in open court the whole case to the court.

(B.) After the judge advocate has spoken no other address shall be allowed.

#### *Finding and Sentence.*

**42.** (A.) The court will deliberate on their finding in closed court (c).

(B.) The opinion of each member of the court will be taken separately on each charge (d).

**43.** (A.) The finding on every charge will be recorded (e) (f), and, except as mentioned in these rules, will be recorded simply as a finding of "guilty," or of "not guilty," or of "Not guilty and honourably acquit him of the same" (g).

(B.) Where the court are of opinion, as regards any charge, that the facts which they find to be proved in evidence differ materially from the facts alleged in the statement of particulars in the charge, but are nevertheless sufficient to prove the offence stated in the charge, and that the difference is not so material as to have prejudiced the prisoner

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(a) See Second Appendix, Form of Proceedings, par. 6.

(b) See Second Appendix, Form of Proceedings, par. 7.

(c) See Rule 62.

(d) See Rule 68.

(e) See Second Appendix, Form of Proceedings, par. 8.

(f) See Second Appendix, Form of Proceedings, par. 9.

(g) See Army Act, 1881, s. 54 (3).

in his defence, they may, instead of a finding of "not guilty," record a special finding (*a*).

(*c*.) The special finding may find the prisoner guilty on a charge subject to the statement of exceptions or variations annexed to the finding (*a*).

(*d*.) Where the court are of opinion, as regards any charge, that the facts proved do not disclose an offence under the Army Act, 1881, the court will acquit the prisoner of that charge (*a*) (*b*).

(*E*.) If the court doubt, as regards any charge, whether the facts proved show the prisoner to be guilty or not of an offence under the Army Act, 1881, they may before recording a finding on that charge refer to the confirming authority for an opinion, and, if necessary, adjourn for that purpose (*a*).

(*F*.) Where there are alternative charges, and the facts proved appear to the court not to constitute the offence mentioned in any of those alternative charges, the court shall record a finding of not guilty on that charge; but if the court think that the facts so proved constitute one of the offences stated in two or more of the alternative charges, but doubt which of those offences the facts do in law constitute, then they may either before recording a finding on those charges refer to the confirming authority for an opinion, and if necessary adjourn for the purpose, or they may record a special finding (*a*) stating the facts which they find to be proved, and stating that they doubt whether those facts constitute in law the offence in such one or another of the alternative charges as are specified in the finding.

**44.** (*A*.) If the finding on each of the charges in a charge-sheet is "Not guilty," the president will date and sign the proceedings, the findings will be announced in open court, and the prisoner will be released in respect of those charges (*b*).

(*B*.) The proceedings shall then, upon being signed by the judge advocate (if any), be transmitted at once in like manner as is directed by these rules in the case where the findings require confirmation (*c*).

**45.** (*A*.) If the finding on any charge is guilty, then, for the guidance of the court in determining their sentence, and of the confirming authority in considering the sentence, the court, before deliberating on their sentence, may (*d*) take evidence of and record the prisoner's character, age, service, and rank, and the length of time he has been in arrest or in confinement on any previous sentence, and any deferred pay, military decoration, or military reward of which he may be in possession or to which he is entitled, and which the court can sentence him to forfeit (*e*).

(*B*.) Evidence on the above matters may be given by a witness verifying a statement which contains a summary of the entries in the regi-

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(*a*) See Second Appendix, Form of Proceedings, par. 8.

(*b*) See Second Appendix, Form of Proceedings, par. 9.

(*c*) See Rules 49 and 95.

(*d*) See Second Appendix, Form of Proceedings, par. 10.

(*e*) See Army Act, 1881, s. 44 (*o*) (11), (12).



mental books respecting that prisoner, and identifying the prisoner as the person referred to in that summary.

(C.) Evidence on the part of the prosecution upon the above matters should not be given by a member of the court.

(D.) The prisoner may cross-examine any such witness, and may call witnesses to rebut such evidence, and if the prisoner so requests, the regimental books, or a duly certified copy of the material entries therein shall be produced, and if the prisoner alleges that the summary is in any respect not in accordance with the regimental books, or such certified copy, as the case may be, the court shall compare the summary with those books or copy, and if they find it is not in accordance therewith, shall cause the summary to be corrected accordingly.

**46.** Where the court desire to sentence an officer to forfeit seniority of rank they may sentence him to take rank and precedence in his corps, or in the army, or in both, as if his appointment to the rank or ranks held by him and specified in the sentence bore the date of some day or days specified in the sentence and later than the actual date of his said appointment (b).

**47.** The court shall award one sentence (c) in respect of all the offences of which the prisoner is found guilty, and such sentence shall be deemed to be awarded in respect of the offence in each charge in respect of which it can be legally given, and not to be awarded in respect of any offence in a charge in respect of which it cannot be legally given.

**48.** (A.) If the court make a recommendation to mercy (c), they shall give their reasons for such recommendation.

(B.) If the court recommend any restoration of service under section 79 of the Army Act, 1881, the recommendation, with the reasons for it, shall be entered in the proceedings (c).

(C.) The number of votes by which a recommendation mentioned in this rule, or any question relative thereto, is adopted or rejected, may be entered in the proceedings.

**49.** Upon the court awarding the sentence, the president shall date and sign the sentence (c), and such signature shall authenticate the whole of the proceedings, and the proceedings upon being signed by the judge advocate, if any, shall be at once transmitted for confirmation (d.)

#### *Confirmation and Revision.*

**50.** (A.) In the case of a finding which does not require confirmation, the confirming officer shall not make any remarks in the proceedings; but if he thinks that anything in the case requires further attention, he shall report it to superior military authority as directed by Her Majesty's Regulations.

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(b) See Army Act, 1881, s. 44 (f.)

(c) See Second Appendix, Form of Proceedings, par. 10.

(d) See Rule 95.

(B.) In the case of findings or sentences which require confirmation (a) the confirming authority—

- (1.) may direct the reassembly of the court for revision of the finding and sentence, or either of them, stating the reasons for such revision; and
- (2.) upon receiving the proceedings, whether original or revised, may confirm or refuse confirmation, and may add any remarks on the case which such authority may think fit, and such confirmation and remarks shall be entered in and form part of the proceedings.

**51.** (A.) Where the finding or sentence is sent back for revision, the court should reassemble in closed court (b), and shall not receive any further evidence (c).

(B.) Where the finding is sent back for revision (d), and the court do not adhere to their former finding, they shall revoke the finding and sentence, and record a new finding, and, if such new finding involves a sentence, pass sentence afresh (c).

(C.) Where the sentence alone is sent back for revision, the court shall not revise the finding.

(D.) After revision the president shall date and sign the decision of the court (d), and the proceedings, upon being signed by the judge advocate, if any, shall be at once transmitted for confirmation (e).

**52.** The charge, finding (f), sentence, and confirmation of a court-martial shall be promulgated in such manner as the confirming authority may direct, and if no direction is given, according to the custom of the service.

**53.** (A.) Where a sentence has been awarded by court-martial in respect of offences in several charges, and the confirming authority confirms the finding on some but not on all of such charges, that authority shall take into consideration the fact of such non-confirmation, and shall, if it seems just, mitigate, remit, or commute the punishment awarded according as seems just, having regard to the offences in the charges, the findings on which are confirmed.

(B.) Where a sentence has been awarded by a court-martial in respect of offences in several charges, and has been confirmed, and any one of such charges, or the finding thereon, is found to be invalid, the authority having power to remit or commute the punishment awarded by such sentence shall take into consideration the fact of such invalidity, and if it seems just, mitigate, remit, or commute the punishment awarded according as seems just, having regard to the offences in the charges which, with the findings thereon, are not invalid, and such punishment shall be as valid as if it had been originally awarded only in respect of those offences.

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(a) See Second Appendix, Form of Proceedings, par. 12.

(b) See Rule 62.

(c) See Army Act, 1881, s. 54 (2).

(d) See Second Appendix, Form of Proceedings, par. 11.

(e) See Rule 95.

(f) See Army Act, 1881, s. 53 (9), s. 54 (3).

**54.** (A.) Where a special finding has been recorded in relation to alternative charges under Rule 43 (F.), and the confirming authority is of opinion that the facts found by such special finding constitute in law the offence charged by any of such alternative charges, such authority may (a) confirm the finding, and in that case shall declare that the finding amounts to a finding of guilty on that charge, but if it is afterwards declared by any authority having power to remit or commute the punishment awarded that the said facts constitute in law the offence charged in one of the other alternative charges, then the confirming authority, or such other authority as aforesaid, may declare (a) that the finding amounts to a finding of guilty on that alternative charge; and the finding shall be a valid finding of guilty on the charge specified in that behalf in the declaration made on confirmation, or, in case of a subsequent declaration, in that subsequent declaration.

(B.) The sentence awarded in the case of any such special finding may likewise be confirmed, subject to this proviso, that if the offence in one of such alternative charges involves a higher punishment, or is otherwise graver, than the offence in the charge of which the prisoner is found to be guilty under the terms of any declaration mentioned in (A.), the authority making the declaration, or some other authority having power to remit or commute the punishment awarded, shall remit or commute the punishment according as seems just, having regard to the last-mentioned offence; and such punishment shall be as valid as if it had been originally awarded in respect of the last-mentioned offence.

**55.** (A.) If the sentence of a court-martial is informally expressed, the confirming authority may, in confirming the sentence, vary the form so that it shall be properly expressed; and if the punishment awarded by the sentence is in excess of the punishment authorized by law, the confirming authority may vary the sentence so that the punishment shall not be in excess of the punishment authorized by law; and the confirming authority may confirm the finding and the sentence as so varied of such court-martial.

(B.) Whenever it appears that a court-martial had jurisdiction to try a prisoner, and that the prisoner was charged with some offence or offences under the Army Act, 1881, and was shown by legal evidence to have been guilty of the offence or one of the offences charged, the finding in respect of the offence or offences of which he is so shown to be guilty and the sentence may be confirmed, and if so confirmed shall be valid, notwithstanding any deviation from these rules or any defect or objection, technical or other, unless it appears that any injustice has been done to the prisoner; but nothing in this rule shall relieve an officer from any responsibility for any wilful or negligent disregard of any of these rules.

#### *Insanity.*

**56.** (A.) Where the court find, either that the prisoner is unfit, by reason of insanity, to take his trial, or that he committed the offence with which he is charged but was insane at the time of the commission thereof, the president shall date and sign the finding, and the proceed-

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(a) See Second Appendix, Form of Proceedings, par. 12.

ings upon being signed by the judge advocate, if any, shall be at once transmitted for confirmation (a).

(B.) If such finding is not confirmed, the prisoner may be tried by the same or another court-martial for the offence with which he was originally charged (b).

(C.) Where such finding is confirmed, then, until the directions of Her Majesty as to the disposal of such prisoner are known, or in the case of a prisoner unfit to take his trial until any earlier time at which such prisoner is fit to take his trial, the prisoner shall be confined in such manner as may in the opinion of the proper military authority be best calculated to keep him securely without unnecessary harshness, as he is not to be considered as a criminal, but as a person labouring under a disease (b).

*General Provisions as to Proceedings of Court.*

**57.** The members of a court-martial will take their seats according to their army rank, except that in the case of a regimental court-martial consisting entirely of officers of the same corps they will take their seats according to their rank in that corps.

**58.** (A.) The president is responsible for the trial being conducted in proper order and in accordance with the Army Act, 1881, and these rules, and will take care that everything is conducted in a manner befitting a court of justice (c).

(B.) It is the duty of the president to see that justice is administered, and that the prisoner has a fair trial, and that he does not suffer any disadvantage in consequence of his position as a prisoner, or of his ignorance or of his incapacity to examine or cross-examine witnesses or otherwise (d).

**59.** (A.) It is the duty of the prosecutor to assist the court in the administration of justice, to behave impartially, to bring the whole of the transaction before the court, and not to take any unfair advantage of, or suppress any evidence in favour of, the prisoner.

(B.) The court may stop the prosecutor in referring to any matter not relevant to the charge then before the court, or any matter which the court is not investigating, and it is the duty of the court to restrain any undue violence of language or want of fairness or moderation on the part of the prosecutor.

(C.) The court should allow great latitude to the prisoner in making his defence; he must abstain from any remarks contemptuous or disrespectful towards the court and from coarse and insulting language towards others, but he may for the purpose of his defence impeach the evidence and the motives of the witnesses and prosecutor, and charge other persons with blame and even criminality, subject if he does so to any liability to further proceedings to which he would otherwise be subject. The court may caution the prisoner as to the irrelevance of his defence, but should not, unless in special cases, stop his defence solely on the ground of such irrelevance.

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(a) See Rule 95 and Second Appendix, Form of Proceedings, par. 9.

(b) See Army Act, 1881, s. 130.

(c) See Army Act, 1881, ss. 28, 126.

(d) See Rule 101 (G).

**60.** Where two or more prisoners are tried together and any evidence is tendered by any one or more of the prisoners, the evidence and addresses on the part of all the prisoners will be taken before the prosecutor replies, and the prosecutor will make one address only in reply as regards all the prisoners.

**61.** (A.) Where the convening officer directs any charges against a prisoner to be inserted in different charge-sheets, the prisoner shall be arraigned, and until after the finding tried, upon each charge-sheet separately, and accordingly the procedure in Rules 31 to 43, both inclusive, shall, until after the finding, be followed in respect of each charge-sheet, as if it contained the whole of the charges against the prisoner.

(B.) The trials upon the several charge-sheets shall be in such order as the convening officer directs.

(C.) When the court have tried the prisoner upon all the charge-sheets they shall, in the case of the finding being "Not guilty," on all the charges, proceed as directed by Rule 44, and, in case of the finding on any one or more of the charges being "Guilty," proceed as directed by Rules 36 and 45 to 49, both inclusive, in like manner in each case, as if all the charges in the different charge-sheets had been contained in one charge-sheet, and the sentence passed shall be of the same effect as if all the charges had been contained in one charge-sheet.

(D.) If the convening officer directs that, in the event of the conviction of a prisoner upon a charge in any charge-sheet, he need not be tried upon the subsequent charge-sheets, the court in such event may, without trying the prisoner upon any of the subsequent charge-sheets, proceed as before directed by (C.)

(E.) Where a charge-sheet contains more than one charge, the prisoner may, before pleading, claim to be tried separately in respect of any charge or charges in that charge-sheet on the ground that he will be embarrassed in his defence if he is not so tried separately, and in such case the court, unless they think his claim unreasonable, shall arraign and try the prisoner in like manner as if the convening officer had inserted the said charge or charges in different charge-sheets.

(F.) If the prisoner pleads "Guilty" to a charge in a charge-sheet, and the trial does not proceed—as mentioned in Rule 36 (B.)—with respect to the other charges in that charge-sheet, the court shall, subject to the directions of the convening officer, proceed to try the prisoner on the charges in the next charge-sheet before they proceed as directed by Rule 36 (C.), (D.), (E.), and (F.)

**62.** (A.) When a court-martial sit in closed court on any deliberation amongst the members or otherwise, no person shall be present except the members of the court, the judge advocate, and any officers under instruction; and the court may either retire or may cause the place where they sit to be cleared of all other persons not entitled to be present (a).

(B.) Except as above mentioned all the proceedings, including the view of any place (b), shall be in open court and in the presence of the prisoner.

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(a) See Army Act, 1881, s. 53 (5).

(b) See Army Act, 1881, s. 53 (7).

**63.** (A.) A court-martial may sit at such times and for such period between the hours of six in the morning and six in the afternoon as may be directed by the proper superior military authority, and so far as no such direction extends as the court from time to time determine.

(B.) If the court consider it necessary to continue a trial after six in the afternoon they may do so, and if they do so, should record in the proceedings their reason for so doing.

(C.) In cases requiring an immediate example, or when the convening officer, or the general or other officer commanding any body of troops, certifies under his hand that it is expedient for the public service, trials may be held at any hour.

(D.) If the court, or the convening officer, or other superior military authority think that military exigencies or the interests of discipline require the court to sit on Sunday, Christmas Day, or Good Friday, the court may sit accordingly, but otherwise the court should not sit on any of those days.

**64.** (A.) When a court is once assembled and the prisoner has been arraigned, the court should (but subject to the provisions of the Army Act, 1881, and of these rules as to adjournment) continue the trial from day to day and sit for a reasonable period on every day unless it appears to the court that an adjournment is necessary for the ends of justice, or that such continuance is impracticable.

(B.) A court-martial in the absence either of a president, or of a judge advocate (if a judge advocate has been appointed for that court-martial), shall not proceed, and if necessary shall adjourn.

(C.) The senior officer on the spot may also, for military exigencies, adjourn or prolong the adjournment of the court.

(D.) Any adjournment may be made from place to place as well as from time to time. If the time to which the adjournment is made is not specified the adjournment will be until further orders from the proper military authority; if the place to which such adjournment is made is not specified the adjournment will be to the same place or to such place as may be specified in further orders from the proper military authority (a) (b).

**65.** (A.) Where in consequence of anything arising while the court are sitting the court are unable by reason of dissolution (as specified in section 53 of the Army Act, 1881, or otherwise), or of the absence of the president, to continue the trial, the president or in his absence the senior member present will immediately report the facts to the convening authority (b).

(B.) Where a court-martial is dissolved before the finding or in the case of a finding of guilty before the sentence, the proceedings are null and the prisoner may be tried before another court-martial.

**66.** In case of the death of the prisoner or of such illness of the prisoner as renders it impossible to continue the trial, the court will ascertain the fact of the death or illness by evidence and record the same and adjourn and transmit the proceedings to the convening authority (c).

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(a) See Army Act, 1881, s. 53 (6).

(b) See Second Appendix, Form of Proceedings, par. 5.

(c) See Army Act, 1881, s. 53 (3).

**67.** (A.) A member of a court who has been absent while any part of the evidence on the trial of a prisoner is taken can take no further part in the trial by that court of that prisoner, but the court will not be affected except as provided by section fifty-three of the Army Act, 1881.

(B.) An officer cannot be added to a court-martial after the prisoner has been arraigned.

**68.** (A.) Every member of a court must give his opinion on every question which the court has to decide, and must give his opinion as to the sentence, notwithstanding that he has given his opinion in favour of acquittal.

(B.) Subject to the provisions of the Army Act, 1881, (a) every question shall be determined by an absolute majority of the opinions of the members of the court, and in the case of an equality of opinions the president's second or casting vote will be reckoned as determining the majority.

(C.) The opinions of the members of the court should be taken in succession, beginning with the junior in rank.

**69.** If any question should arise incidentally during the trial, the person, whether prosecutor or prisoner, requesting the opinion of the court is to speak first; the other person is then to answer, and the first person is to be allowed to reply.

**70.** (A.) A court may be sworn at the same time to try any number of prisoners then present before it, whether the prisoners are to be tried together or separately, and each prisoner shall have power to object to the members of the court, and shall be asked separately whether he objects to any member.

(B.) In the case of several prisoners to be tried separately, the court upon one of those prisoners objecting to a member may, according as they think fit, proceed to determine that objection, or postpone the case of that prisoner and swear the members of the court for the trial of the others alone.

(C.) In the case of several prisoners to be tried separately, the court, when sworn, shall proceed with one case, postponing the other cases, and taking them afterwards in succession.

**71.** (A.) At any time of the trial an impartial person may, if the court think it necessary, and shall, if either the prosecutor or the prisoner requests it on any reasonable ground, be sworn to act as interpreter (b).

(B.) An impartial person may, at any time of the trial, if the court think it desirable, be sworn to act as a shorthand writer (b).

(C.) Before a person is sworn as interpreter or shorthand writer, the prisoner should be informed of the person who is proposed to be sworn, and may object to such person as not being impartial; and the court, if they think that such objection is reasonable, shall not swear that person as interpreter or shorthand writer.

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(a) See Army Act, 1881, ss. 51 (3), (5). 53 (8).

(b) See Rules 27 and 28.

*General Provisions as to Witnesses and Evidence.*

**72.** (A.) A court-martial shall not receive evidence for the prosecution which is not relevant to the facts stated in the statement of particulars in the charge, or any evidence which is not admissible either according to the rules of civil courts in England, or under the Army Act, 1881, or under any other Act of the United Kingdom.

(B.) The rules of evidence adopted in civil courts in England will be followed by courts-martial, and objections to any question to a witness or to the admission of any evidence may be made accordingly, and a person will not be required by a court-martial to answer any question or produce any document which he could not be required to answer or produce in a like proceeding before a civil court in England (a).

(C.) By "civil court" in this rule is meant a court of ordinary criminal jurisdiction in England, including a court of summary jurisdiction.

**73.** The court may take judicial notice of all matters of notoriety, including all matters within their general military knowledge.

**74.** The prosecutor is not bound to call all the witnesses whose evidence is in the summary of evidence or in the abstract of evidence given to the prisoner, but he should ordinarily call such of them as the prisoner desires to be called, in order that the prisoner may, if he thinks fit, cross-examine them, and the prosecutor should for this reason, so far as seems to the court practicable, secure the attendance of all such witnesses.

**75.** If the prosecutor intends to call a witness whose evidence is not contained in any summary or abstract given to the prisoner, notice of the intention shall be given to the prisoner a reasonable time before the witness is called, and if such witness is called without such notice having been given, the court shall, if the prisoner, so desire it, either adjourn after taking the evidence of the witness, or allow the cross-examination of such witness to be postponed, and the court shall inform the prisoner of his right to demand such adjournment or postponement.

**76.** The prisoner shall not be required to give to the prosecutor a list of the witnesses whom he intends to call, but it shall rest with the prisoner alone to secure the attendance of any witness whose evidence is not contained in the summary or abstract and for whose attendance the prisoner has not requested steps to be taken as provided by Rule 14 (A.)

**77.** (A.) The convening officer, or after the assembly of the court the president, shall take the proper steps to procure the attendance of the witnesses whom the prosecutor or prisoner desires to call, and whose attendance can reasonably be procured, but the person requiring the attendance of a witness may be required to undertake to defray the cost (if any) of such attendance.

(B.) Any such witness who is not subject to military law may be sum-

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(a) See Army Act, 1881, ss. 126, 127, 128.



moned to attend by order (a) under the hand of the convening officer, the president of the court, the judge advocate, or the commanding officer of the prisoner (b).

(c.) Any such witness who is subject to military law shall be ordered to attend by the proper military authority (b).

**78.** If such proper steps as mentioned in the preceding rule have not been taken as to any witness, or if any witness, whose attendance could not be reasonably procured before the assembly of the court, is essential to the prosecution or defence, the court shall adjourn and report the circumstances to the convening officer.

**79.** During the trial a witness, other than the prosecutor, ought not, except by special leave of the court, to be in court while not under examination, and if while he is under examination a discussion arises as to the allowance of a question, or the sufficiency of his answers, or otherwise as to his evidence, he may be directed to withdraw.

**80.** (A.) A witness, before he gives his evidence, shall be sworn (c) by the judge advocate, or by the president, or by a member of the court.

(B.) The form of oath for a witness shall be as follows:

The evidence which you shall give before this court shall be the truth, the whole truth, and nothing but the truth. So help you God.

(C.) Rule 30 shall apply to every witness.

(D.) Where a witness is permitted to make a solemn declaration instead of being sworn (d), the declaration may be taken before a person authorized to administer the oath, and the form of declaration shall be as follows:

I do solemnly promise and declare that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

**81.** (A.) Every question may be put to a witness orally by the prosecutor, prisoner, or judge advocate, without the intervention of the court, and the witness will forthwith reply, unless an objection to the question is made by the court, judge advocate, prosecutor, or prisoner, in which case he will not reply until the objection is disposed of. The witness will address his reply to the court.

(B.) The evidence of a witness as taken down should be read to him after he has given all his evidence and before he leaves the court, and such evidence may be explained or corrected by the witness at his instance. If he makes any explanation or correction the prosecutor and prisoner may respectively examine him respecting the same.

**82.** (A.) A witness may be examined (e) by the person calling him, and may be cross-examined by the opposite party to the proceeding,

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(a) For Form, see Second Appendix.

(b) See Army Act, 1881, ss. 28, 125, 126.

(c) See Army Act, 1881, s. 52 (3).

(d) See Army Act, 1881, s. 52 (4).

(e) See Second Appendix, Form of Proceedings, par. 5.

and on the conclusion of the cross-examination may be reëxamined by the person calling him on matters raised by the cross-examination (a).

(B.) The court may, if they think fit, allow the cross-examination of a witness to be postponed.

**83.** (A.) At any time before the time for the second address of the prisoner the judge advocate, also any member of the court, may with the permission of the court address through the president any question to a witness.

(B.) Upon any such question being answered the president shall also put to the witness any question relative to that answer which he may be requested to put by the prosecutor or the prisoner, and which the court deem reasonable.

**84.** (A.) At the request of the prosecutor or prisoner, a witness may, by leave of the court, be recalled, at any time before the time for the second address of the prisoner, for the purpose of having any question put to him through the president.

(B.) A witness may in special cases be allowed by the court to be called or recalled by the prosecutor before the time for the second address of the prisoner, for the purpose of rebutting any material statement made by a witness for the defence upon his examination by the prisoner on any new matter which the prosecutor could not reasonably have foreseen.

(C.) Where the prisoner has called witnesses as to character, the prosecutor before the time for the second address of the prisoner may call or recall witnesses for the purpose of proving a previous conviction or entries in the defaulters' book against the prisoner.

(D.) The court may call or recall any witness at any time before the finding, if they consider that it is necessary for the ends of justice.

*Friend of Prisoner and Counsel.*

**85.** (A.) A prisoner may have a person to assist him during the trial, whether a legal adviser or any other person.

(B.) A person so assisting him may advise him on all points, and suggest the questions to be put to witnesses, and if an officer subject to military law, shall have the same rights and duties as counsel have under these rules, and the right of the prisoner shall be limited in like manner.

**86.** (A.) Subject to these rules, counsel shall be allowed to appear on behalf of the prosecutor and prisoner at general courts-martial:

(1.) When held in the United Kingdom; and

(2.) When held elsewhere, if the commander-in-chief, or the convening officer, declares that it is expedient to allow the appearance of counsel thereat, and such declaration may be made as regards all general courts-martial held in any particular place, or as regards any particular general court-martial, and may be made subject to such reservation as to cases on active service, or otherwise as seems expedient.

(B.) Save as provided in Rule 85, the rules with respect to counsel

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(a) See Rules 34, 36, 38, 39, 40, 45, 84.

will apply only to the courts-martial at which counsel are under this rule allowed to appear.

**87. (A.)** Where a prisoner gives notice of his intention to have a counsel to assist him during the trial, either on the day on which he is informed of the charge (a), or at any time not being less than seven days before the trial, or such shorter time before the trial as in the opinion of the court would have enabled the prosecutor to obtain, if he had thought fit, a counsel to assist him during the trial, and would have enabled the authority appointing a judge advocate to appoint a counsel to act as judge advocate at the trial, or where such notice as mentioned in (B.) is given to the prisoner on the part of the prosecution, a counsel may appear at the court-martial to assist the prisoner.

(B.) If the convening officer so directs, a counsel may appear on behalf of the prosecutor, but in that case, unless the notice in (A.) has been given by the prisoner, notice of the direction for counsel to appear shall be given to the prisoner at such time (not in any case less than seven days) before the trial, as would, in the opinion of the court, have enabled the prisoner to obtain a counsel to assist him at the trial.

(C.) A counsel who appears before a court-martial on behalf of the prosecutor or prisoner shall have the same right as the prosecutor or prisoner for whom he appears, to call, and orally examine, cross-examine, and re-examine witnesses, to make an objection or statement, to address the court, to put in any plea, and to inspect the proceedings, and shall have the right otherwise to act in the course of the trial in the place of the person on whose behalf he appears, and he shall comply with these rules as if he were that person; and in such case that person shall not have the right himself to do any of the above matters except as regards the statement allowed by Rule 92, or except so far as the court permit him so to do.

(D.) When counsel appears on behalf of the prosecutor, the prosecutor, if called as a witness, may be examined and re-examined as any other witness, and Rule 38 (c.) and (D.) shall not apply.

**88. (A.)** The counsel for the prosecution should always make an opening address, and should state therein the substance of the charge against the prisoner, and the nature and general effect of the evidence which he proposes to adduce in support of it without entering into unnecessary detail.

(B.) The counsel appearing on behalf of the prosecutor shall have the same duty as the prosecutor, and is subject to be stopped and restrained by the court in the manner provided by Rule 59 (B.)

**89. (A.)** The counsel appearing on behalf of the prisoner has the like rights and is under the like obligations as are specified in Rule 59 (c.) in the case of the prisoner.

(B.) If the court ask the counsel for the prisoner a question as to any witness or matter he may decline to answer, but he must not give to the court any answer or information which is misleading.

**90. (A.)** Counsel, whether for the prosecution or for the prisoner, will conform strictly to these rules and to the rules of civil courts in

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(a) See Rule 14.

England relating to the examination, cross-examination, and reëxamination of witnesses and relating to the duties of counsel.

(B.) If a counsel puts to a witness a question as to a matter which is not relevant except so far as it affects the credit of the witness by injuring his character, and the witness objects to answering the question, the court shall consider whether the witness should be compelled to answer it; and

- (1.) If they are of opinion that the imputation conveyed by the question would, if true, seriously affect their opinion as to the credibility of the witness, the court should require the witness to answer the question; but
- (2.) If they are of opinion that the said imputation, if true, would not affect, or would not seriously affect the opinion of the court as to the credibility of the witness, the court should disallow the question.

If the question is disallowed, counsel on both sides will refrain from further examining or commenting on the said matter.

(C.) Counsel will not state as a fact any matter which is not proved or which he does not intend to prove in evidence.

(D.) Counsel will not state what is his own opinion as to any matter of fact before the court.

(E.) Counsel will not, in a question to any witness, assume that facts have been given in evidence which have not been given in evidence, or that particular answers have been given contrary to the fact.

(F.) Counsel will treat the court and judge advocate with due respect, and shall, while regarding the exigencies of his case, bear in mind the requirements of military discipline in the respectful treatment of any superior officer of the prisoner who may attend as a witness.

**91.** (A.) Neither the prosecutor nor the prisoner has any right to object to any counsel, if properly qualified.

(B.) A counsel shall be deemed properly qualified—

- (1.) If in England or Ireland he is a barrister-at-law,
- (2.) If in Scotland he is an advocate,
- (3.) If in India he is a barrister-at-law, or advocate,
- (4.) If in any other part of Her Majesty's dominions, he is recognized by the convening officer as having in that part rights and duties similar to those of a barrister-at-law in England and as being subject to punishment or disability for a breach of professional rules.

**92.** (A.) A prisoner assisted by counsel, or by an officer subject to military law, may, if he thinks fit, at the close of the case for the prosecution, and before the address by such counsel or officer, make any statement giving his own account of the subject of the charges against him, but such statement must be made orally, as if he were a witness, except that he must not be sworn and that no question can be put to him by the court or by any person.

(B.) If the prisoner makes such a statement, the procedure will, so far as possible, be the same as if the prisoner had called witnesses other than witnesses as to character.

#### *Proceedings.*

**93.** (A.) At a court-martial the judge advocate, or if there is none,

the president, shall record or cause to be recorded all transactions of that court, and shall be responsible for the accuracy of such record (in these rules referred to as the proceedings), and if the judge advocate is called as a witness by the prisoner, the president will be responsible for the accuracy of the record in the proceedings of the evidence of the judge advocate.

(B.) The evidence shall be taken down in a narrative form in as nearly as possible the words used, but in any case where the prosecutor, the prisoner, the judge advocate, or the court, considers it material, the question and answer shall be taken down verbatim.

(C.) Any question which has been objected to and the tender of any evidence which has been objected to shall, if the prosecutor or prisoner so requests or the court think fit, be entered with the grounds of the objection and the decision of the court thereon.

(D.) Where any address by or behalf of the prosecutor or prisoner, or the summing up of the judge advocate, is not in writing, it shall not be necessary to record the same in the proceedings further or otherwise than the court think proper, or in the case of the summing up than the judge advocate requires, except that—

(1.) the court shall in every case make such record of the defence made by the prisoner as will enable the confirming officer to judge of the reply made by or on behalf of the prisoner to each charge against him; and

(2.) the court should also record any particular matters in the address by or on behalf of the prosecutor or prisoner which the prosecutor or prisoner, as the case may be, requires.

(E.) The court shall not enter in the proceedings any comment on anything before the court, or any report of any fact not forming part of the trial, but if any such comment or report seems to the court necessary, the court may forward it to the proper military authority in a separate document signed by the president.

**94.** The proceedings shall be deemed to be in the custody of the judge advocate (if any), or if there is none, of the president, but may, with proper precautions for their safety, be inspected by the members of the court, the prosecutor, and prisoner respectively, at all reasonable times before the court is closed to consider the finding.

**95.** (A.) Where the court is a general court-martial, the proceedings shall be at once sent by the person having the custody thereof (a) to such person as may be from time to time directed by Her Majesty, and, subject to the provisions of any such direction of Her Majesty, as may be directed by the order convening the court.

(B.) Where the court is a district court-martial, the proceedings shall be at once sent by the person having the custody thereof (a) to such person as may be directed by the order convening the court, or in default of such direction to the confirming officer.

(C.) Where the court is a regimental court-martial the proceedings shall be at once sent by the president to the confirming officer.

**96.** (A.) The proceedings of a court-martial (other than a regimental court-martial) shall after promulgation be forwarded as circumstances

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(a) See Rule 94.

require to the office of the Judge Advocate General in London or India, or to the Admiralty, and there preserved for not less, in the case of a general court-martial, than seven years, and in the case of any other court-martial, than three years (a).

(B.) The proceedings of a regimental court-martial when promulgated shall be preserved for not less than three years with the regimental records of the corps to which the prisoner belonged, in manner from time to time directed by Her Majesty's regulations (a).

**97.** The rate at which copies of the proceedings of a court-martial are to be supplied shall be the actual cost of the copy required, not exceeding twopence for every folio of seventy-two words, and the officer or person having the custody of those proceedings must, on demand made within the time limited (b) for the preservation of such proceedings, supply a copy accordingly to any person tried by such court-martial (a).

**98.** (A.) If the original proceedings of a court-martial or any part thereof are lost, a copy, if any, certified by the president of or the judge advocate at the court-martial, may be accepted in lieu of the original.

(B.) If there is no such copy, and sufficient evidence of the charge, finding, sentence, and transactions of the court can be procured, that evidence may, with the assent of the prisoner, be accepted in lieu of the original proceedings or part thereof lost.

(C.) In any case above in this rule mentioned, the finding and sentence, if requiring confirmation, may be confirmed and shall be as valid as if the original proceedings or part thereof had not been lost.

(D.) If, in a case where confirmation of a finding or finding and sentence is required, the proceedings or part thereof were lost before confirmation, and there is no such copy or evidence, or the prisoner refuses such assent as above mentioned, the prisoner may be tried again; and on the issue of an order convening the court for such trial, the said finding and sentence of the previous court of which the proceedings or part thereof were so lost shall be null.

#### *Judge Advocate.*

**99.** (A.) Where the convening officer is authorized to appoint a judge advocate he shall in the case of a general, and may in the case of a district court-martial, by order appoint a fit person to act as judge advocate at such court-martial.

(B.) An officer who is disqualified for sitting on a court-martial shall be disqualified for acting as judge advocate at that court-martial.

(C.) A court-martial shall not be invalid by reason of any invalidity in the appointment of the judge advocate officiating thereat, in whatever manner appointed, if a fit person has been appointed; but this rule shall not relieve from responsibility the person who made such invalid appointment.

**100.** If the judge advocate dies, or from illness or from any cause whatever is unable to attend, the court shall adjourn and the president

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(a) See Army Act, 1881, s. 124.

(b) See Rule 96.

shall report the circumstance to the convening authority, and a person not disqualified to be judge advocate may be appointed by the proper authority, who shall be sworn (a), and act as judge advocate for the residue of the trial, or until the judge advocate returns (b).

**101.** The powers and duties of a judge advocate are as follows:

- (A.) The prosecutor and the prisoner respectively are, at all times after the judge advocate is named to act on the court, entitled to his opinion on any question of law relative to the charge or trial, whether he is in or out of court, subject, when he is in court, to the permission of the court.
- (B.) At a court-martial he represents the judge advocate-general.
- (C.) He is responsible for informing the court of any informality or irregularity in the proceedings. Whether consulted or not, he will inform the convening officer and the court of any informality or defect in the charge or in the constitution of the court, and will give his advice on any matter before the court.
- (D.) Any information or advice given to the court on any matter before the court will, if he or the court desires it, be entered in the proceedings.
- (E.) At the conclusion of the case he will, unless both he and the court consider it unnecessary, sum up the evidence, and give his opinion upon the legal bearing of the case before the court proceed to deliberate upon their finding.
- (F.) Upon any point of law or procedure which arises upon the trial which he attends, the court should be guided by his opinion and not overrule it except for very weighty reasons. The court are responsible for the legality of their decisions, but they must consider the grave consequences which may result from their disregard of the advice of the judge advocate on any legal point. The court in following the opinion of the judge advocate on a legal point may record that they have decided in consequence of that opinion.
- (G.) The judge advocate has, equally with the president, the duty of taking care that the prisoner does not suffer any disadvantage in consequence of his position as prisoner, or of his ignorance or incapacity to examine or cross-examine witnesses or otherwise, and may for that purpose, with the permission of the court, call witnesses and put questions to witnesses which appear to him necessary or desirable to elicit the truth.
- (H.) In fulfilling his duties the judge advocate will be careful to maintain an entirely impartial position.

*Exception from Rules.*

**102.** Where it appears to the officer convening a court-martial, or to the senior officer on the spot, that military exigencies or the necessities of discipline render it impossible or inexpedient to observe any of the Rules 5, 8, 13, and 14, he may by order under his hand (c) make a dec-

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(a) See Rules 27, 28.

(b) See Second Appendix, Form of Proceedings, par. 5.

(c) For Form, see Second Appendix.

laration to that effect specifying the nature of such exigencies or necessities, and thereupon the trial or other proceeding shall be as valid as if the rule mentioned in such declaration had not been contained herein; and such declaration may be made with respect to any or all of the rules above in this rule mentioned in the case of the same court-martial:

Provided that the prisoner shall have full opportunity of making his defence, and shall be afforded every facility for preparing it which is practicable, having due regard to the said exigencies or necessities.

*Field General Court-Martial.*

**103.** In the case of a field general court-martial under section forty-nine of the Army Act, 1881, the foregoing rules applicable to a general court-martial shall apply, subject to the following exceptions and provisions:

- (A.) The interval between the prisoner being informed of the charge under Rule 14, and his arraignment, shall, when that rule cannot be complied with, be as long as practicable, having regard to the exigencies of the service.
- (B.) Rules 5, 8, 20, 21, and 102 shall not apply.
- (C.) Rule 95 and 96 shall apply as if the court were a district court-martial.
- (D.) Rule 19 (B.) and (C.) shall not apply, except that an officer shall be disqualified for serving on the court if he is the prosecutor, or is a witness for the prosecution, or has a personal interest in the case.
- (E.) A judge advocate shall not be required, and the president may do anything authorized by these rules to be done in the case of a court-martial by the judge advocate.
- (F.) On a plea of guilty the court shall proceed as in the case of a regimental court-martial.
- (G.) Rules 13, 38, 39, 40, and 63 shall apply only so far as it appears to the convening officer or the court to be practicable, having due regard to the exigencies of the service: Provided that the prisoner shall have full opportunity of making his defence, and shall be afforded every facility for preparing it which is practicable, having due regard to the said exigencies.

*Summary Court-martial.*

The foregoing rules shall not, save as hereinafter mentioned, apply to summary courts-martial, which shall be subject to the following rules:—

**104.** (A.) A summary court-martial may be convened by the commanding officer of any corps or portion of a corps on active service, or by any officer in immediate command of a portion of a body of forces on active service.

(B.) Where it appears to any such officer, on complaint or otherwise, that a person subject to military law has committed an offence, he may convene a summary court-martial to try such person, if he is satisfied that it is not practicable\* to try such person by an ordinary court-

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\* See below, Rule 121.



martial, and—where he is below the rank of field officer and is not a commanding officer—is further satisfied that it is not practicable\* to delay the trial for reference to a superior officer.

**105.** (A.) Not less than three officers must be appointed, unless the convening officer is of opinion that three officers are not available,\* in which case two may be appointed.

(B.) If the convening officer is of opinion that three other officers are not available\* to form the court, he may appoint himself president of the court; but if he is of opinion either that three other officers are available,\* or that although three other officers are not available\* he himself is by reason of his position as confirming officer or otherwise not available,\* he should appoint another officer to be president, who may be of any rank, but should not be below the rank of captain, unless in the opinion of the convening officer an officer of that or some higher rank is not available.\*

(C.) The officers should have held commissions for not less than one year, and if in the opinion of the convening officer any officers are available\* who have held commissions for not less than three years he should appoint those officers in preference to officers of less service.

(D.) The provost marshal, an assistant provost marshal, and an officer who is prosecutor or a witness for the prosecution, must not be appointed a member of the court, but save as aforesaid any available officers may be appointed to sit.

**106.** The court may be convened and the proceedings of the court recorded in accordance with the form in the Second Appendix to these rules; but where it appears to the convening officer that military exigencies or other circumstances prevent the use of such form, the court-martial may be convened and the proceedings carried on without any writing, except that such written record as seems practicable\* must be kept by the provost marshal or assistant provost marshal, if present, or if not, by the president and the officer charged with the promulgation, stating, as near as may be, the particulars set forth in the form, and stating at least the name (or, if the name is not known, the description) of the offender, the offence charged, the finding, the sentence, and the confirmation.

**107.** The statement of an offence may be made briefly in any language sufficient to describe or disclose an offence under the Army Act, 1881.

**108.** The court may be sworn at the same time to try any number of prisoners then present before it, but, except so far as prisoners are tried together for an offence committed collectively, the trial of each prisoner will be separate.

**109.** (A.) The names of the president and members of the court will be read over in the hearing of the prisoners, who will be asked if any of them objects to be tried by any of those officers.

(B.) If any prisoner objects to an officer, and any member of the court

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\* See below, Rule 121.

thinks the objection reasonable, steps will be taken to try the prisoner before a court composed of officers against whom he has no reasonable objection.

**110.** The president will administer to the other members of the court, and a member of the court when sworn will administer to the president, the following oath :

You do swear, that you will well and truly try the prisoner [*or* prisoners] before the court according to the evidence, and that you will duly administer justice according to the Army Act now in force, without partiality, favour, or affection; and you do further swear that you will not divulge the sentence of the court until it is duly confirmed; and you do further swear that you will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law. So help you God.

**111.** When the court are sworn the president will state to the prisoner then to be tried the offence with which he is charged, with, if necessary, an explanation giving him full information of the act or omission with which he is charged, and will ask the prisoner whether he is guilty or not of the offence.

**112.** If a special plea to the general jurisdiction is offered by the prisoner, and is considered by the court to be proved, the court shall report the same to the convening officer.

**113.** (A.) The witnesses for the prosecution will be called and the prisoner will be allowed to cross-examine them and to call any available witnesses for his defence.

(B.) The following oath shall be administered by a member of the court to every witness :

The evidence which you shall give before this court shall be the truth, the whole truth, and nothing but the truth. So help you God.

**114.** (A.) A member of the court or a witness may take an oath with such ceremonies and in such manner as makes the same binding on his conscience, and the words "you" and "So help you God" may be varied or omitted for the purpose.

(B.) A member of the court or a witness who objects to take an oath, or is objected to as incompetent to take an oath, may be allowed by the court in lieu of an oath to make a solemn declaration, which will be in the same form as the oath, with the substitution of "I" for "you," and with the omission of "You do swear that" and "So help you God," and with the substitution or addition, where necessary, of "I do solemnly declare that."

**115.** The prisoner will be asked what he has to say in his defence, and shall be allowed to make his defence.

**116.** (A.) In the case of an equality of votes on the finding the prisoner will be acquitted.

(B.) The finding of acquittal requires no confirmation, and if it relates to all the offences charged against a prisoner will be declared at the

time of the finding, and the prisoner will thereupon be discharged from custody.

**117.** (A.) The court, if consisting of three or more officers, may award any sentence which a general court-martial can award; but if the court pass sentence of death the whole court must concur.

(B.) The court, if consisting of two officers, may award any sentence authorized for the offence, not exceeding summary punishment or two years' imprisonment with hard labour.

(C.) Any recommendation to mercy will be attached to the proceedings, and communicated to the prisoner together with the finding and sentence.

**118.** (A.) Except as provided by Rules 109 (B.), 116, and 117, every question will be determined by the majority of votes, and in case of equality the president shall have a second or casting vote.

(B.) If after the commencement of the trial the court consider that any prisoner named in the schedule to the order convening the court should be tried by an ordinary court-martial, the court may strike the name of that prisoner out of the schedule.

(C.) The proceedings shall be held in open court, in the presence of the prisoner, except on any deliberation among the members, when the court may be closed.

(D.) The court may adjourn from time to time, and may, if necessary, view any place.

**119.** (A.) Except in the case of acquittal the finding and sentence of the court shall be valid only in so far as the same are confirmed by proper military authority.

(B.) The provost marshal or an assistant provost marshal cannot confirm the finding or sentence of the court.

(C.) A prosecutor of a prisoner or a member of the court trying a prisoner cannot confirm the finding or sentence of the court as regards that prisoner, except that if a member of the court trying a prisoner would otherwise under these rules have power to confirm the sentence, and is of opinion that it is not practicable\* to delay the case for the purpose of referring it to any other officer, he may confirm the finding and sentence.

(D.) Where a sentence of death or penal servitude has been passed, the sentence shall not be carried into effect until confirmed by a general or field officer commanding the force with which the prisoner is present at the date of his sentence:

Provided that in case of a sentence of death it shall be the duty of any such officer who is not in chief command of the forces in the field comprising the said force with which the prisoner is present, to reserve the sentence for confirmation by a superior officer, except where he is of opinion that by reason of the nature of the country, the great distance, or the operations of the enemy, it is not practicable\* to delay the case for confirmation by the said officer in chief command, or by any officer superior to himself in command of the said force with which the prisoner is present, and in that case he may confirm the same.

(E.) Subject to the exceptions in (B.), (C.), and (D.), the finding and

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\*Sec Rule 121.

sentence of a summary court-martial as regards any prisoner may be confirmed by any general or field officer or by the commanding officer of a corps or portion of a corps, or by any officer not qualified as aforesaid but being in immediate command of a detachment or portion of the body of the forces with which the prisoner is present: Provided that—

(1.) It shall be the duty of any such officer in immediate command as aforesaid, if not otherwise qualified to confirm, to reserve for confirmation by superior authority a finding and sentence, except where he is of opinion that it is not practicable\* to delay the case for that purpose; and

(2.) it shall be the duty of an officer who has not power to confirm the finding and sentence of a general or district court-martial to reserve—save as provided by (F.)—for confirmation by an officer having that power a sentence awarding a punishment in excess of that which a regimental court-martial can award.

(F.) Where the punishment awarded by a sentence is such that an officer is required to reserve the same for confirmation, that officer may nevertheless, if he thinks fit, confirm the sentence, if in confirming it he mitigates, remits, or commutes the punishment, so as to make it a punishment a sentence for which he has power to confirm.

(G.) Any officer may, if he thinks it desirable, reserve any finding or sentence for confirmation by superior authority.

(H.) An officer not having power to confirm the finding and sentence of a district court-martial shall not have power to commute summary punishment into imprisonment for any period exceeding forty-two days.

(I.) A confirming authority shall not send back a finding and sentence for revision more than once, and on any revision the court shall not take further evidence nor increase the sentence.

**120.** The foregoing rules, 53 (Mitigation of sentence on partial confirmation,) 55 (Confirmation notwithstanding informality in or excess of punishment), 95 (Transmission of proceedings after finding), 96 (Preservation of proceedings), 97 (Rate of payment for copies of proceedings), and 98 (Loss of proceedings), shall, so far as practicable, apply as if a summary court-martial were a district court-martial.

**121.** (A.) In the rules with respect to summary courts-martial, unless the context otherwise requires, the expressions “practicable” and “available” mean respectively practicable and available, having due regard to the public service.

(B.) The expression “commanding officer of a corps or portion of a corps” means the officer whose duty it is under the provisions of Her Majesty’s Regulations, or, in the absence of any such provisions, under the custom of the service, to deal with a charge against any of the persons belonging to such corps or portion of a corps who are present under his command, of having committed an offence, that is, to dispose of the charge on his own authority, or to refer it to superior authority.

**122.** Any statement in an order convening a summary court-martial as to the opinion of the convening officer, and any statement in the minute confirming the finding or sentence of a summary court-martial

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\* See Rule 121.

as to the opinion of the confirming officer, shall be conclusive evidence of such opinion, but this rule shall not prejudice the proof at any time of any such opinion when not so stated.

## PART II.—MISCELLANEOUS.

### *Regulations for Courts of Inquiry, other than Courts of Inquiry held under Section 72 of the Army Act, 1881.*

**193.** (A.) A court of inquiry may be assembled by the officer in command of any body of troops, whether belonging to one or more corps.

(B.) The court may be composed of any number of officers of any rank, and of any branch or department of the service, according to the nature of the investigation.

(C.) The court will be guided by the written instructions of the officer who assembled the court. The instructions should be full and specific, and must state the general character of the information required from the court in their report.

(D.) A court of inquiry has no judicial power, and is in strictness not a court at all, but an assembly of persons directed by a commanding officer to collect evidence with respect to a transaction into which he cannot conveniently himself make inquiry.

(E.) Previous notice should be given of the time and place of the meeting of a court of inquiry, and of all adjournments of the court, to all persons concerned in the inquiry.

(F.) Whenever any inquiry affects the character of an officer or soldier, full opportunity must be afforded to such officer or soldier of being present throughout the inquiry, and of making any statement he may wish to make, and of cross-examining any witness whose evidence, in his opinion, affects his character, and producing any witnesses in defence of his character.

(G.) A court of inquiry has no power to compel witnesses to attend, and the evidence cannot be taken on oath.

(H.) A court of inquiry will give no opinion on the conduct of any officer or soldier, and the proceedings of a court of inquiry cannot be given in evidence against an officer or soldier. Nevertheless in the event of an officer or soldier being tried by court-martial in respect of any matter or thing which has been reported on by a court of inquiry, such officer or soldier shall be entitled to a copy of the proceedings of the court of inquiry.

(I.) The whole of the proceedings of a court of inquiry will be forwarded by the president to the commanding officer who assembled the court, and that commanding officer will, on his own responsibility, form such opinion as he thinks just.

(J.) When, in consequence of the assembling of a court of inquiry, an opinion adverse to the character of any officer or soldier is formed by the officer who determines the case so inquired into, whether such officer be the officer who assembled the court or a superior officer to whom the case has been referred by such last-mentioned officer, such adverse opinion shall be communicated to the officer or soldier against whom it has been given.

(K.) The court may be reassembled as often as the convening officer

may direct, for the purpose of examining additional witnesses or recording further information.

(L.) Members of a court of inquiry in a case which is subsequently the subject of a court-martial, are not to be detailed as members of the court-martial.

*Regulations for Courts of Inquiry under Section 72 of the Army Act, 1881, for the purpose of determining the illegal Absence of Soldiers.*

**124.** (A.) A court of inquiry under section 72 of the Army Act, 1881, will, when assembled, require the attendance of such witnesses as they think sufficient to prove the absence and other facts specified as matters of inquiry in the said section.

(B.) They will take down the evidence given them in writing, and at the end of the proceedings will make a declaration of the conclusions at which they have arrived in respect of the facts they are assembled to inquire into.

(C.) The commanding officer of the absent soldier will enter in the regimental books a record of the declaration of the court, and the original proceedings will be destroyed.

(D.) The court of inquiry will examine all witnesses who may be desirous of coming forward on behalf of the absentee, and in making their declaration will give due weight to the evidence of such witnesses.

(E.) A court of inquiry will administer the same oath or solemn declaration to the witnesses as if the court were a court-martial (a), but the members of such court will not themselves be sworn.

*Explanation of "Prescribed" and "Commanding Officer."*

**125.** (A.) The committing authority under ss. 59, 60, 61, 64, and 65 of the Army Act, 1881, shall include the officer commanding the military district or station where the military convict or military prisoner may for the time being be, and when the convict or prisoner is in Ireland the general commanding the forces in Ireland, but any officer in this rule mentioned shall not, by virtue of this rule, be a discharging authority.

(B.) The removing authority under section 64, and the competent military authority under section 67 of the said Act shall, as regards a military prisoner for the time being in Ireland, include the general commanding the forces in Ireland.

(C.) The general commanding the forces in Ireland, as respects a military prisoner undergoing his sentence in Ireland, and the adjutant general, as respects persons undergoing sentence in any place whatever, shall be authorities having power under section 57 of the Army Act, 1881, to mitigate, remit, or commute punishment awarded by sentence of a court-martial.

**126.** Where a court of inquest is required to be convened by the commanding officer under section 133 of the Army Act, 1881, the court shall be convened and inquest held in manner following:

(a.) The commanding officer of the station will order the court to assemble.

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(a) See Rule 80.

- (b.) The court will consist of three officers and of a medical officer.
- (c.) The court shall not take evidence on oath, and shall warn every person who is accused or suspected that he is not required to give evidence criminating himself, but that any statement or evidence he gives may be used against him in the event of any further proceedings being instituted.
- (d.) The court, after hearing the evidence, will report to the officer commanding the station the evidence as to the cause of the death, together with the written opinion of the medical officer of the court on his examination of the body as to the cause of death.
- (e.) The commanding officer will, as soon as practicable, forward the report of the court to the nearest civil magistrate having authority to hold an inquest on death, who may proceed thereon as if he had himself held the inquest.

**127.** The competent military authority in Part II of the Army Act, 1881, includes, in addition to the commander-in-chief and adjutant general in section 101 of that Act mentioned, the following officers, namely:—

(i.) In India—

The commander-in-chief of the forces in India, and  
The commander-in-chief of the forces of any presidency in India;

(ii.) In any place situate out of India, and out of the United Kingdom, the general or other officer commanding the forces in such place.

In addition to the above-mentioned officers it also includes—

- (iii.) For the purpose of sections 80, 82, 84, and 85 of the said Act, the commanding officer of the soldier, and every officer superior in command to that commanding officer, and not hereinbefore included;
- (iv.) For the purposes of any transfer by consent under section 82 (2), the general commanding the forces in Ireland, and the general commanding a military district in the United Kingdom;
- (v.) For the purposes of section 99, any officer having power to convene a district court-martial for the trial of the soldier;
- (vi.) It also includes such officer as may be directed from time to time by Her Majesty's Regulations to perform in any place, or for any purpose specified in that behalf, the duty of the competent military authority.

**128.** The expression "commanding officer" as used in the sections of the Army Act, 1881, relating to "*Courts-martial*," to the "*Execution of sentence*," and to the "*Power of commanding officer*," and in the provisions consequential thereon, and in these rules, means in relation to any person the officer whose duty it is under the provisions of Her Majesty's Regulations, or in the absence of any such provisions, under the custom of the service, to deal with a charge against that person of having committed an offence, that is, to dispose of it on his own authority or refer it to a superior authority.

*Colonial Prisons.*

**129.** (a) A military prisoner who has been sentenced to imprisonment in any place out of the United Kingdom may, if he is in any place mentioned in the first column of the following table, be committed, or, if he has been committed to prison, be removed, if occasion arises, to a *military* prison wherever situate (b), or to an *authorized* prison situate in any place mentioned opposite thereto in the second column of the following table:—

TABLE.

A military prisoner sentenced to imprisonment and being in any place in any of the groups following:—	May be committed, or, if he has been committed to prison, may be removed, to an authorized prison in—
<p style="text-align: center;">GROUP I.</p> <p style="text-align: center;">(American and Mediterranean.)</p> <p>Canada.  Prince Edward Island.  Newfoundland.  Bermuda.  British Columbia.  Gibraltar.  Malta.  Cyprus.*</p>	<p>Any place in Group I (American and Mediterranean); or  In Group III (South African); or  In Group VII.</p>
<p style="text-align: center;">GROUP II.</p> <p style="text-align: center;">(West Indian.)</p> <p>West Indies, including—  Jamaica.  Turks and Caicos Islands.  Honduras.  Bahamas.  Barbados and Windward Islands.  St. Vincent.  Granada.  Tobago.  St. Lucia.  Antigua and Leeward Islands.  Montserrat.  St. Christopher.  Nevis.  Virgin Islands.  Dominica.  British Guiana.  Trinidad.</p>	<p>Any place in Group II (West Indian); or  In Group I (American and Mediterranean); or  or  In Group III (South African); or  In Group VII.</p>

(a) The main object of this rule as regards a colony where there is no military prison, is to enable a prisoner to be removed with or sent to his regiment if the regiment is serving in that colony, but not to allow prisoners in any other case to be sent to that colony. No prisoners will be committed or removed to a colony where troops are not serving without the consent of the government of that colony.

(b) Prisoners will not, except for special reasons which must be at once reported to a superior authority for the information of the Secretary of State for War, be removed to a *military* prison in any place if they could not be removed under this Rule to an *authorized* prison in that place.

\* Declared to be a colony for the purposes of imprisonment by the Army Act, 1881, s. 190.



A military prisoner sentenced to imprisonment and being in any place in any of the groups following :—

GROUP III.

(South African.)

South Africa, including—  
Cape of Good Hope.  
Natal.  
Griqualand, West.  
St. Helena.

May be committed, or, if he has been committed to prison, may be removed, to an authorized prison in—

Any place in Group III (South African); or  
In Group I (American and Mediterranean);  
or  
In Group V (Australasian); or  
In Group VII.

GROUP IV.

(West African.)

West African Colonies, including—  
Sierra Leone.  
Gambia.  
Gold Coast.  
Lagos.

Any place in Group IV (West African); or  
In Group I (American and Mediterranean);  
or  
In Group II (West Indian); or  
In Group III (South African); or  
In Group VII.

GROUP V.

(Australasian.)

Australian Colonies, including—  
New South Wales.  
Queensland.  
Tasmania.  
South Australia.  
Victoria.  
Western Australia.  
New Zealand.  
Fiji.  
Falkland Islands.

Any place in Group V (Australasian); or  
In Group I (American and Mediterranean);  
or  
In Group III (South African); or  
In Group VII.

GROUP VI.

India, as defined by the Army Discipline and Regulation Act, 1879, and including—  
Aden and Perim.  
Mauritius.  
Ceylon.  
Hong Kong.  
Straits Settlements.  
Labuan.

Any place in Group VI; or  
In Group I (American and Mediterranean);  
or  
In Group III (South African); or  
In Group V (Australasian); or  
In Group VII.

GROUP VII.

Heligoland.  
Channel Islands and Isle of Man.\*

Any place in Group VII.

This rule shall not authorize any removal from a prison in the United Kingdom to a prison elsewhere.

\* Declared to be a colony for the purposes of imprisonment by the Army Act, 1881, s. 187 (2.)

## PART III.—SUPPLEMENTAL.

**130.** Any power or jurisdiction given to, and any act or thing to be done by, to, or before any person holding any military office, for the purpose of these rules, may be exercised by, or done by, to, or before any other person for the time being authorized in that behalf according to the custom of the service. †

**131.** In any case not provided for by these rules such course will be adopted as appears best calculated to do justice.

**132.** (A.) The forms in the appendices to these rules should be followed in all cases in which they are applicable, and when used shall be valid in law, but a deviation from such forms will not, by reason only of such deviation, render any charge, warrant, order, proceedings, or other document invalid.

(B.) An omission of any such form will not by reason only of such omission render any act or thing invalid.

(C.) The notes to and instructions in the forms will be considered as instructions which it is expedient to follow in all cases to which such notes and instructions apply.

**133.** In these rules, unless the context otherwise requires,—

(A.) The expression “proper military authority” when used in relation to any power, duty, act, or matter means such military authority as, in pursuance of Her Majesty’s Regulations or the custom of the service, exercises or performs that power or duty or is concerned with that act or matter.

(B.) The expression “commander-in-chief” means, as regards India, the commander-in-chief in India.

(C.) The expression “Army Act, 1881,” includes any Act whether passed before or after the date of these rules which amends or applies that act, also any act whether passed before or after the date of these rules which enacts an offence which is triable by court-martial.

(D.) Other expressions have the same meaning as if these rules formed part of the Army Act, 1881 (a), and accordingly words in the singular number include the plural, and words in the plural number include the singular, and the masculine gender includes the feminine gender.

**134.** (A.) Time, for the purposes of any proceeding or other matter under these rules, shall be reckoned exclusive of Sunday, Good Friday, and Christmas Day, but any time reckoned for the purposes of Rule 6, or of any punishment, or of any deduction of pay, shall include those days.

(B.) Any report or application directed by these rules to be made to a superior authority or proper military authority shall be made in writing through the proper channel, unless such authority, on account of military exigencies or otherwise, dispenses with the writing.

(C.) These rules shall apply to a person subject to military law as an officer (b) in like manner, so nearly as circumstances admit, as if he were

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† See Army Act, 1881, s. 171.

(a) See s. 190.

(b) See Army Act, 1881, s. 175 (7), (8).

an officer, and to a person subject to military law as a soldier (*a*) in like manner, so nearly as circumstances admit, as if he were a soldier, subject nevertheless to the restrictions contained in the Army Act, 1881, and to this qualification—that nothing in these rules shall confer on any person not an officer or soldier any jurisdiction or power as an officer or soldier.

(D.) Nothing in these rules shall be construed to be contrary to or inconsistent with any provision of the Army Act, 1881.

**135.** These rules shall, save as otherwise expressly provided, apply to the Channel Islands and the Isle of Man in like manner as if they were part of the United Kingdom.

**136.** These rules shall apply in every place, whether within or without Her Majesty's dominions.

**137.** These rules may be cited as the Rules of Procedure, 1881.

**138.** (A.) The foregoing rules, so far as they relate to summary courts-martial, shall come into operation in any place at the date thereof, or if that date is prior to the commencement of the Army Discipline and Regulation (Annual) Act, 1881, in that place, then on that commencement, and on such rules coming into operation in any place the rules in force with respect to field general courts-martial under section 72 of the Army Discipline and Regulation Act, 1879, shall determine in that place.

(B.) Rule 125 and so much of the foregoing rules as relate to the forms in the Third Appendix, shall come into operation in any place on the commencement in that place of the Regulation of the Forces Act, 1881, and so much of any rules then in operation as are inconsistent therewith shall determine in that place.

(C.) The foregoing rules, so far as they are not already in operation on the first day of January 1882, shall come into operation on that day, except in any place in which that day precedes the commencement of the Regulation of the Forces Act, 1881, in that place, in which case these rules shall come into operation in that place on that commencement, and on the day on which these rules come into operation in any place the rules made in pursuance of the Army Discipline and Regulation Act, 1879, so far as they are then in force, shall determine.

(D.) Any court-martial, proceeding, or thing held, done, or commenced under any rules determined in pursuance of this rule shall be as valid and may be completed and carried into effect as if the said rules were still in force.

Her Majesty has made the foregoing rules in pursuance of the Army Act, 1881, and those rules will therefore be observed by all persons concerned.

(Signed) HUGH C. E. CHILDERS.

WAR OFFICE,  
29th August, 1881.

The foregoing rules are to be observed by the Royal Marine Forces when subject to the Army Act, 1881, until further rules are made in pursuance of section 70 of the said Act.

(Signed) NORTHBROOK.  
A. COOPER-KEY.

ADMIRALTY,  
29th November, 1881.

(a) See Army Act, 1881, s. 176 (9), (10).

## ARMY PROCEDURE RULES.

## FIRST APPENDIX.—FORMS OF CHARGES.

*Note as to Use of Forms of Charges.*

(1.) Every charge-sheet will begin as shown in the forms in Part I of the forms of charges, which are given as examples.

The description of an officer or soldier of the regular forces by his rank and corps is a sufficient averment that he is an officer or soldier, and that he is amenable to military law. In other cases words must be added to show that the person is amenable to military law. (See Rule 10.)

(2.) The commencement of the charge-sheet (according to the form in Part I) will be followed by the charge or charges.

(3.) Each charge will consist of two parts, a statement of the offence and a statement of the particulars. (Rule 11 (B).)

(4.) The statement of the offence will be in one of the forms in Part II.

(5.) Where two or more words or expressions occur in Part II bracketed together one under the other, the particular word or expression should be used which most accurately describes the offence which appears to the officer framing the charge to be capable of proof by legal evidence.

(6.) Where the officer framing the charge is doubtful whether the offence so capable of being proved by legal evidence is more accurately described by one word or expression, or by another, he may frame two or more alternative charges, each charge containing one of the words or expressions which appear to the officer to be applicable to the facts as capable of proof.

(7.) Where two or more of the words or expressions bracketed together appear, when coupled together with the word "and," accurately to describe the offence, the charge may couple together such words or expressions; but in no case must the charge couple with the word "or" two or more of the words or expressions bracketed together. (See Rule 11 (A).)

(8.) For example, a man may be charged with making away with his arms, ammunition, *and* necessities, but a charge for making away with his arms, ammunition *or* necessities will be a bad charge.

(9.) A man should not be charged, however, with making away with by pawning *and* selling his arms, and necessities, as in such case he is charged with at least two distinct offences which ought to be included in at least two distinct charges, one for making away with by pawning his arms and necessities, the other for making away with by selling his arms and necessities; but he may, if desirable, be charged in four distinct charges, one for pawning his arms, another for pawning his necessities, a third for selling his arms, and a fourth for selling his necessities.

(10.) In the former example (par. 8) the offence is the sale of some article which he is prohibited from selling, and is the same offence although committed in respect of different articles. In the second example (par. 9) there are two distinct offences of making away with his articles,—(a) by pawning, (b) by selling,—although committed in respect of the same objects—arms and necessities.

(11.) In a few cases, shown in italics bracketed, thus [ ],—as for instance in s. 4 (1 *b*), s. 6 (7) (8) and (12), and s. 24,—words may be inserted in the charge which are not in the Act. In these cases the Act contains a general expression such as “other person,” or “other place,” or “other means,” and the officer framing the charge must omit these words, and insert a description of the person, place, or means.

(12.) Words inserted in brackets, thus [ ], without italics, must be adopted or not according to circumstances. For example, if the offender was not on active service the words “when on active service” must be omitted.

(13.) In some cases,—for example, s. 10 (4), s. 14, s. 15 (3), s. 16, and ss. 18, 27 (3) (4), and 37,—the offence can only be committed by an officer or by a non-commissioned officer or by a soldier. The forms of charge do not contain any reference to this fact, inasmuch as it will appear from the commencement of the charge whether the prisoner is or is not an officer, non-commissioned officer or soldier, and therefore capable of committing the offence. Care, however, must be taken not to charge an officer with an offence which a soldier only can commit, nor a soldier with an offence which an officer only can commit. In some cases the offence, even though not expressed in the Act to be limited to an officer or soldier, can, from the nature of things, only be committed by an officer or soldier. For example, the offence in s. 4 (1) (a), can only be committed by an officer, while the offence of losing regimental necessities (s. 24) can only be committed by a soldier.

(14.) The statement of the offence in each charge will be followed by the appropriate statement of particulars, commencing with the words “in that he,” &c., or “in having,” &c., and stating in brief ordinary language what the prisoner is alleged to have done.

(15.) The words “in that he” will be followed by the verb in the past tense; the words “in having” will be followed by the past participle. The sentence stating the particulars will be framed more easily sometimes in the one form, sometimes in the other.

(16.) In the case of several charges the particulars in one charge may refer to the particulars in another (Rule 11 (E.)); as, for example, “in having done the acts alleged in the particulars to the first charge,” or “in that at the place and time aforesaid he was deficient in the necessities above mentioned in the second charge which it was his duty to have.” If the prisoner is acquitted on any charge in which full particulars were set out, and is convicted on a charge which referred to those particulars, the particulars referred to must be treated as having been set out in full in the charge on which the prisoner is convicted, and must be set out in full in any record of conviction in which the particulars are set out.

(17.) The statement of particulars should specify all the ingredients

necessary to constitute the offence; for example, if the charge is under s. 9 (2), for disobeying a lawful command, the "particulars" must state the command, and show that it was given by a superior officer, and also how the prisoner disobeyed the command; while, if the charge is under s. 9 (1), the "particulars" should also show how the command was given personally, and how the prisoner showed a wilful defiance of authority.

(18.) The "particulars" should always give a general description of the place where the offence was committed, such as the station or town or "the line of march," and, if it is material to the charge and is known, the exact place. The prepositions "near" or "between" may be used (for instance, "at or near," "between,") to assist in describing a place not exactly known, but they must never be used where the exact place is of the essence of the offence.

(19.) The "particulars" should always state the date at which the offence was committed. If the exact date or time is unknown the offence may be stated as having been committed "on or about" a particular day or time. This must never be done where the time is of the essence of the offence, as, for example, the case of absence without leave, or being drunk on a post.

(20.) In some cases the offence may be stated with most accuracy as having been committed between two days or between two times; as, for instance, in the case of absence without leave or of quitting a post; in other cases "between" may be used in consequence of the exact day or exact time not being known.

(21.) The words "or near" and "or about" and "between" should never be used unless it is impossible to express the exact place or time, or the exact place or time is clearly unimportant, or unless the word "between" is the most accurate expression of the place or time.

(22.) In many cases, as, for instance, where the prisoner's defence is an alibi, the time and place may be of the utmost importance in proving that alibi, although it is not the essence of the offence.

(23.) There must be added at the end of the "particulars" a statement of any expenses, loss, or damage in respect of which the court-martial will be asked to award compensation under section 137 or 138 (Rule 11 (F).) For example, there may be added to the "particulars" in the case of a charge of fraudulent enlistment an averment to the effect that the prisoner thereby obtained a free kit, value ..... pounds, and, in the case of a charge under s. 10 (2) or (3), that the prisoner thereby damaged .....s coat to the value of ..... shillings, and .....s watch to the value of ..... shillings; and other statements may be made according to the facts.

(24.) If, however, the expenses, loss or damage, were caused by an act or omission which constitutes another offence separately specified in the Act, that act or omission should be charged as a separate offence; for example, if a man deserts and is deficient in his regimental necessaries, he should be charged in a separate charge for loss by neglect of his necessaries. It would not be proper to state it as a consequence of the desertion, or to award compensation for it upon a conviction for desertion only.

(25.) A charge for an offence under the Acts relating to the auxiliary forces or reserve forces or any other Act other than the Army Act, 1881, must, in accordance with the Rules of Procedure 11 and 133, follow as nearly as possible the words of the Act, and where the enactment is in the alternative, each charge must, as in the following forms, state one only of the alternatives.

## FORMS OF CHARGES.

### PART I.

#### *Commencement of Charge-Sheet.*

The prisoner [number, rank, name, regiment,] a soldier [officer] of the regular forces,

*or,*

The prisoner [rank, name,] on half pay [state office held on the staff of the army],

*or,*

The prisoner [rank, name,] half pay [*or* pensioner] employed on military service under the orders of [rank, name,] an officer of the regular forces,

*or,*

The prisoner, major-general [or other rank] [name] commanding [or otherwise on full pay],

*or,*

The prisoner [number, rank, name] a militiaman, of the ..... regiment, called out for training, [*or* embodied or otherwise subject to military law],

*or,*

The prisoner [name, description,] being a follower of the ..... forces is charged with—

Where the position of the prisoner as respects his conditions of service has changed between the time when he committed the offence and the time when he is charged, as, for example, if the training period of a militiaman has expired or if a soldier has been discharged and therefore ceased to be subject to military law, the commencement of the charge will run as follows :

The prisoner [name] is charged with having while being [number, rank,] of the ..... regiment, a militiaman called out for training [*or*, number, rank, of the ..... regiment, a soldier of the regular forces] committed the following offence [offences], namely, •





## Section 6.

- (1A.) [When on active service,] leaving his commanding officer to go in search of plunder.
- (1B.) [When on active service,] leaving his  $\left\{ \begin{array}{l} \text{guard} \\ \text{picquet} \\ \text{patrol} \\ \text{post} \end{array} \right\}$  without orders from his superior officer.
- (1C.) [When on active service,] forcing a safeguard.
- (1D.) [When on active service,]  $\left\{ \begin{array}{l} \text{forcing} \\ \text{striking} \end{array} \right\}$  a soldier when acting as sentinel.
- (1Ea.) [When on active service,] impeding  $\left\{ \begin{array}{l} \text{the provost marshal} \\ \text{an assistant provost marshal} \\ \text{an officer} \\ \text{a non-commissioned officer} \\ \text{[other person]} \end{array} \right\}$  legally exercising authority  $\left\{ \begin{array}{l} \text{under} \\ \text{on behalf of} \end{array} \right\}$  the provost marshal.
- (1Eb.) [When on active service, and] when called on, refusing to assist in the execution of his duty  $\left\{ \begin{array}{l} \text{the provost marshal} \\ \text{an assistant provost marshal} \\ \text{an officer} \\ \text{a non-commissioned officer} \\ \text{[other person]} \end{array} \right\}$  legally exercising authority  $\left\{ \begin{array}{l} \text{under} \\ \text{on behalf of} \end{array} \right\}$  the provost marshal.
- (1Fa.) [When on active service,]  $\left\{ \begin{array}{l} \text{doing violence to a} \\ \text{person bringing} \end{array} \right\}$  provisions  $\left\{ \begin{array}{l} \text{supplies} \end{array} \right\}$  to the forces.
- (1Fb.) [When on active service,] committing an offence against the  $\left\{ \begin{array}{l} \text{property} \\ \text{person} \end{array} \right\}$  of an inhabitant of  $\left\{ \begin{array}{l} \text{the country in which} \\ \text{he was serving.} \end{array} \right\}$
- (1G.) [When on active service,]  $\left\{ \begin{array}{l} \text{house} \\ \text{[other place]} \end{array} \right\}$  in search of plunder.
- (1H.) [When on active service,] by  $\left\{ \begin{array}{l} \text{discharging firearms} \\ \text{drawing swords} \\ \text{beating drums} \\ \text{making signals} \\ \text{using words} \\ \text{[any means whatever]} \end{array} \right\}$  intentionally occasioning false alarms  $\left\{ \begin{array}{l} \text{in action.} \\ \text{on the march.} \\ \text{in the field.} \\ \text{[elsewhere.]} \end{array} \right\}$
- (1Ia.) [When on active service,] treacherously making known the  $\left\{ \begin{array}{l} \text{parole} \\ \text{watchword} \\ \text{countersign} \end{array} \right\}$  to a person not entitled to receive it.
- (1Ib.) [When on active service,] treacherously giving a  $\left\{ \begin{array}{l} \text{parole} \\ \text{watchword} \\ \text{countersign} \end{array} \right\}$  different from what he received.
- (1J.) [When on active service,]  $\left\{ \begin{array}{l} \text{detaining} \\ \text{appropriating} \\ \text{irregularly} \end{array} \right\}$  to his own  $\left\{ \begin{array}{l} \text{corps} \\ \text{battalion} \\ \text{detachment} \end{array} \right\}$  contrary to orders issued in that respect  $\left\{ \begin{array}{l} \text{provisions} \\ \text{supplies} \end{array} \right\}$  proceeding to the forces.
- (1K.) When a soldier acting as sentinel  $\left\{ \begin{array}{l} \text{sleeping on his post.} \\ \text{being drunk on his post.} \\ \text{leaving his post before he was regularly relieved.} \end{array} \right\}$
- (2A.) By  $\left\{ \begin{array}{l} \text{discharging firearms} \\ \text{drawing swords} \\ \text{beating drums} \\ \text{making signals} \\ \text{using words} \\ \text{[any means whatever]} \end{array} \right\}$  negligently occasioning false alarms  $\left\{ \begin{array}{l} \text{in action.} \\ \text{on the march.} \\ \text{in the field.} \\ \text{[elsewhere.]} \end{array} \right\}$
- (2Ba.) Making known the  $\left\{ \begin{array}{l} \text{parole} \\ \text{watchword} \\ \text{countersign} \end{array} \right\}$  to a person not entitled to receive it.



## Section 11.

- (1.) Neglecting to obey  $\left\{ \begin{array}{l} \text{general} \\ \text{garrison} \\ \text{[other]} \end{array} \right\}$  orders.

## DESERTION, FRAUDULENT ENLISTMENT, AND ABSENCE WITHOUT LEAVE.

## Section 12.

- (1.)  $\left\{ \begin{array}{l} \text{[When on active service]} \\ \text{[When under orders for active service]} \end{array} \right\}$  deserting Her Majesty's service.  
 attempting to desert Her Majesty's service.
- (2.)  $\left\{ \begin{array}{l} \text{[When on active service]} \\ \text{[When under orders for active service]} \end{array} \right\}$   $\left\{ \begin{array}{l} \text{persuading} \\ \text{endeavoring to persuade} \\ \text{procuring} \\ \text{attempting to procure} \end{array} \right\}$  a person subject to military law to desert from Her Majesty's service.

## Section 13.

- (1.) and (2.) Fraudulent enlistment.

## Section 14.

- (1.) Assisting a person subject to military law to desert Her Majesty's service.
- (2.) When cognizant of  $\left\{ \begin{array}{l} \text{the desertion} \\ \text{the intended} \\ \text{desertion} \end{array} \right\}$  of a person  $\left\{ \begin{array}{l} \text{subject to} \\ \text{military law} \\ \text{not forthwith} \end{array} \right\}$   $\left\{ \begin{array}{l} \text{giving notice to his commanding officer} \\ \text{taking some} \\ \text{steps in his} \\ \text{power to} \\ \text{cause the} \end{array} \right\}$  deserter  $\left\{ \begin{array}{l} \text{intending} \\ \text{deserter} \end{array} \right\}$  to be apprehended

## Section 15.

- (1a.) Absenting himself without leave.
- (2a.) Failing to appear at the  $\left\{ \begin{array}{l} \text{parade} \\ \text{place of} \end{array} \right\}$  rendezvous  $\left\{ \begin{array}{l} \text{appointed by his commanding officer.} \end{array} \right\}$
- (2b.) Without leave, before he was re-  $\left\{ \begin{array}{l} \text{parade} \\ \text{lieved, going from the place of} \end{array} \right\}$  rendezvous  $\left\{ \begin{array}{l} \text{appointed by his commanding} \\ \text{officer.} \end{array} \right\}$
- (2c.) Without urgent necessity, quitting the ranks.
- (3.)  $\left\{ \begin{array}{l} \text{When in camp} \\ \text{When in garrison} \\ \text{When [elsewhere]} \end{array} \right\}$  being  $\left\{ \begin{array}{l} \text{beyond the limits} \\ \text{fixed by} \\ \text{in a place pro-} \\ \text{hibited by} \end{array} \right\}$  general  $\left\{ \begin{array}{l} \text{orders, without a pass} \\ \text{or written leave from} \\ \text{his commanding of-} \\ \text{ficer.} \end{array} \right\}$
- (4.) Without leave from his commanding officer or due cause absenting himself from school when duly ordered to attend there.

## DISGRACEFUL CONDUCT.

## Section 16.

Behaving in a scandalous manner, unbecoming the character of an officer and a gentleman.

## Section 17.

- (a.)  $\left\{ \begin{array}{l} \text{When charged} \\ \text{with} \\ \text{When con-} \\ \text{cerned in} \end{array} \right\}$   $\left\{ \begin{array}{l} \text{the care} \\ \text{the distri-} \\ \text{bution} \end{array} \right\}$  of public  $\left\{ \begin{array}{l} \text{money} \\ \text{goods} \end{array} \right\}$   $\left\{ \begin{array}{l} \text{stealing} \\ \text{fraudulently} \\ \text{misapplying} \\ \text{embezzling} \end{array} \right\}$  the same.
- (b.)  $\left\{ \begin{array}{l} \text{When charged} \\ \text{with} \\ \text{When con-} \\ \text{cerned in} \end{array} \right\}$   $\left\{ \begin{array}{l} \text{the care} \\ \text{the distri-} \\ \text{bution} \end{array} \right\}$  of public  $\left\{ \begin{array}{l} \text{money} \\ \text{goods} \end{array} \right\}$   $\left\{ \begin{array}{l} \text{being con-} \\ \text{cerned in} \\ \text{the} \\ \text{conniving} \\ \text{at the} \end{array} \right\}$   $\left\{ \begin{array}{l} \text{stealing} \\ \text{fraudulent} \\ \text{misappli-} \\ \text{cation} \\ \text{embezzle-} \\ \text{ment} \end{array} \right\}$  there-  
of.

- (c.) { When charged with } the care { of public } goods wilfully damaging  
 { When concerned in } the distribution { of regimental } the same.

## Section 18.

(1a.) Malingering.

(1b.) { Feigning } disease.  
 { Producing } infirmity.

(2a.) Wilfully { maiming { himself { with intent } himself  
 { injuring { another soldier { thereby to } such other } unfit for service.  
 { } { render } soldier { } }

(2b.) Causing himself to be { maimed } by some person, with intent thereby to render  
 { injured } himself unfit for service.

(3.) { Being wilfully guilty of misconduct by }  
 { means of which misconduct } he { produced } disease.  
 { Wilfully disobeying orders by means of } { aggravated } infirmity.  
 { which disobedience } { delayed the cure of }

(4a.) { Stealing { money { the property of { a comrade.  
 { Embezzling { goods { an officer.  
 { } { belonging to a regimental { mess.  
 { } { } { band.  
 { } { } { institution.  
 { } { public money.  
 { } { public goods.

(4b.) Receiving, knowing { stolen { money { the property of { a comrade.  
 them to be { embezzled { goods { an officer.  
 { } { belonging to a regimental { mess.  
 { } { } { band.  
 { } { } { institution.  
 { } { public money.  
 { } { public goods.

(5a.) Such an offence of a fraudulent nature as is mentioned in sub-section five of section eighteen of the Army Act, 1881.

(5b.) Disgraceful conduct of { a cruel  
 { an indecent } kind.  
 { an unnatural }

## DRUNKENNESS.

## Section 19.

(1a.) Drunkenness on duty.

(1b.) Drunkenness.

## OFFENCES IN RELATION TO PRISONERS.

## Section 20.

(1.) When in command of a { guard  
 { picquet } [wilfully] releasing without proper authority a  
 { patrol } prisoner committed to his charge.  
 { post }

(2.) { Wilfully } allowing to escape } committed to his charge } keep.  
 { Without reasonable excuse } a prisoner } whom it was his duty to } guard.

## Section 21.

(1a.) Unnecessarily detaining a prisoner in { arrest  
 { confinement } without bringing him to trial.

(1b.) Unnecessarily failing to bring a prisoner's case before the proper authority for investigation.

- (2.) After having committed a person to the custody of { an officer  
a non-commissioned officer  
a provost marshal  
an assistant provost marshal } failing without reasonable cause to deliver { at the time of the committal or as soon as practicable within 24 hours after such committal } to the officer to the non-commissioned officer to the provost marshal to the assistant provost marshal into whose custody the person was committed an account in writing signed by himself of the offence with which the person so committed is charged.
- (3.) When in command of a guard, failing { as soon as he was relieved from { duty } within twenty-four hours after a prisoner was committed to his charge } { to give in writing to the officer to whom he was ordered to report the prisoner's name. } prisoner's offence so far as known to him. { name } of the officer { rank } of the [person] { the written account given him by the officer [person] } by whom the prisoner was charged. { soner was committed to his custody. }

## Section 22.

- (1.) When in { arrest  
confinement  
prison  
[other lawful custody] } escaping.  
attempting to escape.

## OFFENCES IN RELATION TO PROPERTY.

## Section 23.

- (1.) Conniving at the exaction of an exorbitant price for a { house  
stall } let to a sutler.
- (2.) { Laying a duty upon  
Taking a fee in respect of  
Taking an advantage in respect of  
Being interested in } { the sale of provisions  
the sale of merchandise  
the sale of the purchase of } { brought into  
for the use of some of Her Majesty's forces. } { a garrison  
a camp  
a station  
a barrack  
a [place] } in which { command.  
he has } authority.

## Section 24.

- (1.) { Making away with by  
Being concerned in making  
away with by } { pawning  
selling  
destruction  
[otherwise] } { his arms.  
his ammunition.  
his equipments.  
his instruments.  
his clothing.  
his regimental necessities.  
a horse of which he had charge. }
- (2.) Losing by neglect { his arms.  
his ammunition.  
his equipments.  
his instruments.  
his clothing.  
his regimental necessities.  
a horse of which he had charge. }

(3.) Making away with by { pawning  
selling  
destruction  
[otherwise] } a military decoration granted him.

(4.) Wilfully injuring { his arms.  
his ammunition.  
his equipments.  
his instruments.  
his clothing.  
his regimental necessities.  
a horse of which he had charge.  
property belonging to { a comrade.  
an officer.  
a regimental mess.  
a regimental band.  
a regimental institution.  
public property.

(5.) Ill-treating a horse used in the public service.

#### Section 25.

(1.) In a { report  
return  
muster roll  
pay list  
certificate  
book  
route  
[other  
document] } made by him  
signed by him  
of the contents  
of which it  
was his duty  
to ascertain  
the accuracy } knowingly making { a false statement.  
being privy to the } a fraudulent statement.  
making of } an omission with intent  
to defraud.

(2.) { Knowingly,  
and with  
intent to } defraud { suppressing  
injure some } making away with } a document which { preserve.  
person } defacing } it was his duty to } produce.  
altering }

(3.) Where it was his official duty to make a declaration respecting any matter knowingly making a false declaration.

#### Section 26.

(1.) When signing a document relating to { pay  
arms  
ammunition  
equipments  
clothing  
regimental  
necessaries  
provisions  
furniture  
bedding  
blankets  
sheets  
utensils  
forage  
stores } leaving in blank a material part for which his signature was a voucher.

(2.) { Refusing to  
By culpable neglect  
omitting to } make { a report } which it was his duty to { make.  
send { a return } send.

#### Section 27.

(1.) Making a false accusation against { an officer } knowing such accusation to be false.  
a soldier }

(2.) In making a complaint { knowingly making a false statement { an officer.  
where he thought } affecting the character of } a soldier.  
himself wronged { knowingly and wilfully suppressing { material facts.  
a material fact.

- (3.) Falsely stating to his commanding officer that he had
- |   |                                    |   |                                    |
|---|------------------------------------|---|------------------------------------|
| { | been guilty of                     | { | desertion.                         |
|   | served in and been discharged from | { | fraudulent enlistment.             |
|   |                                    |   | desertion from the navy.           |
|   |                                    |   | a portion of the regular forces.   |
|   |                                    | { | a portion of the reserve forces.   |
|   |                                    | { | a portion of the auxiliary forces. |
|   |                                    | { | the navy.                          |
- (4.) Making a wilfully false statement to a
- |         |                  |   |   |
|---------|------------------|---|---|
| {       | military officer | { | in respect of the prolongation of furlough. |
| justice |                  |   |   |

## OFFENCES IN RELATION TO COURTS-MARTIAL.

## Section 28.

- (1.) When duly { summoned } as a witness before a court-martial, making default in attending.
- (2.) Refusing to { take an oath legally required by a court-martial to be taken. make a solemn declaration legally required by a court-martial to be made. }
- (3.) Refusing to produce a document in his { power } legally required by a court-martial to be produced by him.
- (4.) Refusing when a witness to answer a question to which a court-martial might legally require an answer.
- (5.) Being guilty of contempt of a court-martial by { using { insulting } language. threatening } causing { an interruption } in the proceedings of such a disturbance } court.

## Section 29.

- (1.) Wilfully giving false evidence when examined on
- |   |      |   |                           |
|---|------|---|---------------------------|
| { | oath | { | before { a court-martial. |
|   |      |   |                           |

## OFFENCES IN RELATION TO BILLETING.

## Section 30.

- (1.) Being guilty of ill-treatment by
- |   |                                |   |                    |
|---|--------------------------------|---|--------------------|
| { | violence                       | { | of the occupier of |
|   |                                |   |                    |
| { | making disturbances in billets | { | which a            |
|   |                                |   |                    |
- (2.) { Refusing } { on complaint } { violence } { an officer } { under his command of the occupier }
- |   |            |   |           |   |        |   |                                  |
|---|------------|---|-----------|---|--------|---|----------------------------------|
| { | Neglecting | { | and proof | { | making | { | of a house in which a { person } |
|   |            |   |           |   |        |   |                                  |
- (3.) Failing to comply with the provisions of the Army Act, 1881, with respect to the
- |   |   |   |                                    |   |   |           |   |            |   |                   |
|---|---|---|------------------------------------|---|---|-----------|---|------------|---|-------------------|
| { | payment of the just demands of a person on whom | { | he                                 |   |   |           |   |            |   |                   |
|   |   |   |                                    | making up and transmitting of an account of the money due to a person on whom | { | his horse |   |            |   |                   |
|   |   |   |                                    |   |   |           | { | an officer | { | under his command |
|   |   |   |                                    |   |   |           |   |            |   |                   |
|   |   | { | the horse { an officer } under his |   |   |           |   |            |   |                   |
|   |   | { | of { a soldier } command           |   |   |           |   |            |   |                   |
- (4.) Wilfully demanding billets which were not actually required for some
- |       |              |   |             |
|-------|--------------|---|-------------|
| {     | person       | { | entitled to |
| horse | be billeted. |   |             |

- (5.) { Taking  
Knowingly suffering to be } from a person { money } for { excusing } a person  
taken { a reward } { relieving }
- from { his liability } in respect { billeting } of { officers.  
a part of his liability } of the { quartering } { soldiers.  
horses.
- (6a.) { Using { menace to { a constable } to make him give billets contrary to  
Offering { compulsion on { a civil officer } the Army Act, 1881.
- (6b.) { Using { menace } a con- { tending } deter { him from  
Offering { to } stable { to } discourage { performing  
{ compul- } a civil { tending to induce him to do some- { part of  
{ sion on } officer { thing contrary to } his duty under  
the provisions  
of the Army  
Act, 1881, re-  
lating to bil-  
leting.
- (7.) { Using } menace to { a person tend- { to receive, without his  
Offering } compulsion on { ing to ob- { consent, a { person } the provi-  
lige him { lige him { horse } sions of the  
to furnish some accom- Army Act,  
modation which he is 1881, re-  
not required to fur- relating to  
nish by billeting.

## OFFENCES IN RELATION TO IMPRESSMENT OF CARRIAGES.

## Section 31.

- (1.) Wilfully demanding { carriages } which were not actually required for purposes  
animals { authorized by the Army Act, 1881.  
vessels }
- (2.) Failing to comply with the provisions of { the payment of sums due for carriages.  
the Army Act, 1881, relating to the im- } the weighing of the load.  
pressment of carriages, as regards }
- (3.) Constraining { a carriage { furnished in pur- to travel against the will of the per-  
an animal { suance of the provisions of the person in charge thereof beyond the  
a vessel { the Army Act, 1881, relating proper distance.  
to the impress- to carry against the will of the person  
ment of car- in charge thereof a greater weight  
riages } than he was required by the said  
provisions to carry.
- (4.) Failing to discharge { a carriage } furnished in pursuance of the provisions of the  
as speedily as { an animal } Army Act, 1881, relating to the impressment  
practicable { a vessel } of carriages.
- (5.) { Compelling { a per- { furnished in } baggage } not entitled to be  
Permitting { son in } pursuance of the provisions of the Army Act, 1881, though not carried.  
the com- charge } the im- provisions of the Army Act, 1881, relating to the im- furnished soldier { who  
pelling of { of } pressment of car- a requisition of emergency, woman. { was  
a carriage } rriages to take there- a } person. { not  
an animal } on } person. { sick..
- (6.) { Ill-treating { a person in { a carriage } furnished in pursuance of the pro-  
Permitting the ill- } charge of { an animal } visions of the Army Act, 1881,  
treatment of { a vessel } relating to the impressment of } carriages.



- (7.) { Using { menace  
Offering { to  
          { compul- a con-  
          { sion on stable }  
          { } to make him { a carriage  
          { } provide { an animal  
          { } a vessel } which he was not bound,  
          { } in pursuance of the pro-  
          { } visions of the Army Act,  
          { } 1881, relating to the im-  
          { } pressment of carriages,  
          { } to provide.  
          { } tend- { deter } him from { his duty  
          { } ing to { discour- } performing { in rela-  
          { } age } a part of { tion to  
          { } tending to induce him to do { the pro-  
          { } something contrary to { viding  
          { } of } carriages.  
          { } animals.  
          { } vessels.
- (8.) Forcing { a carriage  
              { an animal  
              { a vessel } from the owner thereof.

## OFFENCES IN RELATION TO ENLISTMENT.

## Section 32.

- (1.) After having { discharged with disgrace from { enlisting in the regular  
been { a part of Her Majesty's forces { forces without de- discharge.  
          { dismissed with disgrace from { claring the circum- dismissal.  
          { the navy { stances of his

## Section 33.

- (1, 2.) Making a wilfully false answer to a question set forth in the attestation paper which was put to him by or by direction of the justice before whom he appeared for the purpose of being attested.

## Section 34.

- (1.) Being concerned in the enlistment { knew  
for service in the regular forces { had reason- such man to be so circumstanced  
of a man when he { able cause { that by enlisting he committed  
                          { to believe { an offence against the Army  
                          { } Act, 1881.
- (2.) Wilfully con- { the enactments of the Army { in a matter { enlistment { of soldiers  
travening { Act, 1881, { relating { attestation { of the reg-  
          { [other enactments] { to the { ular forces  
          { the regulations of the service {

## MISCELLANEOUS MILITARY OFFENCES.

## Section 35.

- (1.) Using { traitorous  
          { dialoyal } words regarding the Sovereign.

## Section 36.

- (1.) Without { ver-  
due { bally  
author- { in writ-  
ity { ing  
          { by sig-  
          { nal  
          { [other-  
          { wise] } dis-  
          { } clos-  
          { } ing { the numbers of { some forces  
          { } the position of { some magazines of  
          { } some prepara- { some stores of the  
          { } tions for { forces  
          { } some orders re- { operations { of some  
          { } lating to { movements { forces  
          { } at such time and  
          { } in such man-  
          { } ner as to have  
          { } produced ef-  
          { } fects injurious  
          { } to Her Maj-  
          { } esty's service.

## Section 37.

- (1.) { Striking  
          { Ill-treating } a soldier.
- (2.) After receiving { an officer } unlawfully detaining  
the pay of { a soldier } unlawfully refusing to pay } the same when due.

## Section 38.

- (1.)  $\left\{ \begin{array}{l} \text{Fighting} \\ \text{Promoting} \\ \text{Being concerned in} \\ \text{Conniving at fighting} \end{array} \right\}$  a duel.
- (2.) Attempting to commit suicide.

## Section 39.

- (1.) On application being made to him  $\left\{ \begin{array}{l} \text{neglecting} \\ \text{refusing} \end{array} \right\}$   $\left\{ \begin{array}{l} \text{to deliver over to the} \\ \text{civil magistrate} \\ \text{to assist in the lawful} \\ \text{apprehension of} \end{array} \right\}$   $\left\{ \begin{array}{l} \text{an officer} \\ \text{a soldier} \end{array} \right\}$   $\left\{ \begin{array}{l} \text{accused of an offence} \\ \text{punishable by a} \\ \text{civil court.} \end{array} \right\}$

## Section 40.

- (1.)  $\left\{ \begin{array}{l} \text{An act} \\ \text{Conduct} \\ \text{Disorder} \\ \text{Neglect} \end{array} \right\}$  to the prejudice of good order and military discipline.

## Section 41.

- (1-4.)  $\left\{ \begin{array}{l} \text{When on active service} \\ \text{In Gibraltar} \\ \text{In some place not in the United Kingdom or Gibraltar} \\ \text{and more than one hundred miles as measured in a} \\ \text{straight line from any city or town in which he can} \\ \text{be tried by a competent civil court for the offence} \end{array} \right\}$   $\left\{ \begin{array}{l} \text{committing the} \\ \text{offence} \\ \text{of} \end{array} \right\}$   $\left\{ \begin{array}{l} \text{treason.} \\ \text{murder.} \\ \text{manslaughter.} \\ \text{treason-} \\ \text{felony.} \\ \text{rape.} \end{array} \right\}$
- (5.) Committing a civil offence, that is to say, [*state the offence according to English law, either using legal terms, e. g., arson, larceny, larceny from the person, assault, robbery with violence, &c., or, in ordinary language, e. g., stealing, injuring property, setting fire to a house, &c.*]

## Section 155.

- (1-3.)  $\left\{ \begin{array}{l} \text{Negotiating} \\ \text{Acting as} \\ \text{agent for} \\ \text{Aiding} \\ \text{Conniving at} \end{array} \right\}$   $\left\{ \begin{array}{l} \text{the } \left\{ \begin{array}{l} \text{sale} \\ \text{purchase} \end{array} \right\} \text{ of a commission in Her Majesty's regular forces.} \\ \text{the } \left\{ \begin{array}{l} \text{giving} \\ \text{receiving} \end{array} \right\} \left\{ \begin{array}{l} \text{of any valuable con-} \\ \text{sideration in re-} \\ \text{spect of any} \end{array} \right\} \left\{ \begin{array}{l} \text{promotion in} \\ \text{retirement} \\ \text{from} \\ \text{employment} \\ \text{in} \end{array} \right\} \text{ Her Maj-} \\ \text{any exchange made in man-} \\ \text{ner not authorized by regu-} \\ \text{lations made in pursuance of} \\ \text{the Regimental Exchanges} \\ \text{Act, 1875, and in respect of} \\ \text{which a} \end{array} \right\}$   $\left\{ \begin{array}{l} \text{sum of money} \\ \text{[consideration]} \end{array} \right\}$  has been  $\left\{ \begin{array}{l} \text{given.} \\ \text{received.} \end{array} \right\}$

## ILLUSTRATION OF CHARGE.

*Note.*—The following is an illustration of a complete charge-sheet, with statement of offences and particulars :

## CHARGE-SHEET.

The prisoner, No. 153, Private John Smith, 69th Regiment, a soldier of the regular forces, is charged with—

First, *Using threatening language to his superior officer—*  
in that

at Topsham Barracks, Exeter, on the 20th of June, 1880, he said to Sergeant William Robinson, his superior officer, "I will punch your head," or words to that effect.

Secondly, *Resisting an escort whose duty it was to have him in charge—*  
in that

at the place and on the day mentioned in the first charge he kicked

Drummer James Burn, of the 69th Regiment, who was taking him into confinement, and thereby damaged a watch and chain of the said James Burn to the amount of 5s.

## SECOND APPENDIX.

### FORMS AS TO COURTS-MARTIAL.

#### FORMS FOR ASSEMBLY OF COURTS-MARTIAL.

##### No. 1.—General.

###### *Form of Order for the Assembly of a General Court-Martial.*

..... orders by ..... commanding the .....  
[Place, date.]

The detail of officers as mentioned below will assemble at .....  
..... on the ..... day of ..... for the purpose  
of trying by a general court-martial the prisoners [prisoner] named in  
the margin [and such other prisoner or prisoners as may be brought  
before them].\*

PRESIDENT.

..... is appointed president.†

MEMBERS.

WAITING MEMBERS.

JUDGE ADVOCATE.

..... has been [or where the convening officer  
has the appointment of a judge advocate is hereby] appointed judge  
advocate.

Prisoners [the prisoner] will be warned and all witnesses duly required  
to attend.

The proceedings will be forwarded to .....

Signed this ..... day of .....

By Order.

A. B.

\*Any opinion of the convening officer with respect to the composition of the court (see Rules of Procedure 20 and 21) should be added here, thus: "In the opinion of the convening officer, officers of different corps are not, having due regard to the public service, available," or as the case may be.

†Add here, if the president is under the rank of field officer, and the officer convening the court is not under that rank, "In the opinion of the convening officer a field officer is not, having due regard to the public service, available."

**No. 2.—District.***Form of Order for the Assembly of a District Court-Martial.*

..... orders by ..... commanding .....

[Place, date.]

The detail of officers as mentioned below will assemble at ..... on ..... for the purpose of trying by district court-martial the prisoners [prisoner] named in the margin [and such other prisoner or prisoners as may be brought before them.]†

**PRESIDENT.**

..... is appointed president.§

**MEMBERS.**

Prisoners will be warned and all witnesses duly required to attend.  
The proceedings will be forwarded to.....

Signed this ..... day of .....

By Order.

A. B.

† Any opinion of the convening officer with respect to the composition of the court (see Rules of Procedure 20 and 21) should be added here, thus:—"In the opinion of the convening officer, officers of different corps are not, having due regard to the public service, available," or as the case may be.

§ If the president is under the rank of field officer, and the convening officer is not under that rank, after the words "appointed president," add "in the opinion of the convening officer a field officer is not, having due regard to the public service, available," and if the president is under the rank of captain add, "In the opinion of the convening officer a captain is not, having due regard to the public service, available."

If a judge advocate is appointed, his appointment will be notified or made in the same manner as in the form of order for the assembly of a general court-martial.

**No. 3.—Regimental.***Form of Order for the Assembly of a Regimental Court-Martial.*

..... orders by ..... commanding .....

[Place, date.]

The officers mentioned below will assemble at ..... on ..... for the purpose of trying by regimental court-

martial the prisoners [prisoner] named in the margin, [and such other prisoner or prisoners as may be brought before them.]

PRESIDENT.

..... is appointed president.†

MEMBERS.

Prisoners will be warned and all witnesses duly required to attend.  
The proceedings will be forwarded to .....

Signed this ..... day of .....

By Order.

A. B.

† If the president is under the rank of captain, after the words "appointed president, add "the court-martial being held on the line of march," or "the court-martial being held on board the ..... a ship\* ..... commissioned by Her Majesty," or "in the opinion of the convening officer a captain is not, having due regard to the public service, available."

#### No. 4.—Field General.

*Form of Order for the Assembly of a field General Court-Martial.*

at ..... [state the place] in ..... [state the country]  
this ..... day of ..... 18...

Whereas complaint has been made to me, the undersigned, an officer in command of ..... in the above-named country, that the persons named in the annexed Schedule, being subject to military law and under my command, have committed the offences in the said Schedule mentioned, being offences against the property or person of inhabitants of or residents in the above-named country, and I am of opinion that it is not practicable that those offences should be tried by an ordinary general court-martial:

I hereby order that the officers mentioned below shall assemble at ..... on the ..... day of ..... for the purpose of trying the said persons by field general court-martial.

PRESIDENT.

..... is appointed president.

MEMBERS.†

The prisoners will be warned and all witnesses duly required to attend.

\* If the ship is not Her Majesty's ship, insert "not."

† These members will be mentioned by name.

The proceedings will be forwarded to .....

Signed this ..... day of .....

[*Instruction.*—This order will be signed by the officer who convenes the court.]

#### SCHEDULE.

Name & of alleged offender.	Offence charged.

#### No. 5.—Summary.

[*See below, Form of Proceedings.*]

#### No. 6.—Declaration for Suspension of Rules.

*Form of Declaration of military exigencies or the necessities of discipline.  
under Rule of Procedure 102.*

In my opinion [\*military exigencies, namely, (*state them*)] render it [†impossible] to observe the provisions of rules † ..... on trial of ..... by ..... court-martial assembled pursuant to the order of the ..... of.....

Signed at ..... this ..... day of .....

A. B.

[*Instruction.*—This declaration must be signed by the officer whose opinion is given, and will be annexed to the proceedings.]

§If the name of the person charged is unknown he may be described as unknown, with such addition as will identify him.

\* [*Or the necessities of discipline.*]

† [*Or inexpedient.*]

‡ State the rule or rules which cannot be observed. (See Rule 102.)

### Form of Proceedings of Courts-Martial.

**FORM OF PROCEEDINGS OF A GENERAL COURT-MARTIAL** (including some of the more unusual incidents which may occur to vary the ordinary course of procedure, with instructions for the guidance of the Court).

PROCEEDINGS OF A GENERAL COURT-MARTIAL held at .....  
 .....on the.....day of.....  
 18....., by order of ..... Commanding  
 ....., dated the ....., 18.....

#### PRESIDENT.

<i>Rank.</i>	<i>Name.</i>	<i>Regiment.</i>
.....	.....	.....

#### MEMBERS.

<i>Rank.</i>	<i>Name.</i>	<i>Regiment.</i>
.....	.....	.....
.....	.....	.....
.....	.....	.....

....., Judge Advocate.

At ..... o'clock the Court opens.

Trial of § .....

(1.) The order convening the Court is read, and [a copy thereof] is marked ....., signed by the President, and attached to the proceedings.

The charge-sheet and the summary [*or abstract*] of evidence are laid before the court.

[*Instruction.*—All documents relating to the court, or the matters before it, which are intended to form part of the proceedings (such as an order respecting the time of sitting or directing an adjournment, or a declaration respecting military necessities, or a letter answering any question referred to the convening officer) at whatever period of the

§ Here insert No., Rank, Name and Regiment, and appointment (if any).

N.B.—The proper Army Forms, to be obtained from general officers commanding, will be used in accordance with the Instructions.

The same form will be used for district courts-martial and for field general courts-martial under section 49 of the Army Act, 1881, and will apply, as nearly as may be, with the substitution of "district" (or "field general" as the case requires) for "general," and with the omission, where there is no Judge Advocate, of all reference to the Judge Advocate.

For regimental courts-martial an Army Form will be used similar to the form for a general court-martial, with the substitution of "regimental" for "general," and with the omission of all reference to the Judge Advocate.

trial they are received should be read in open court, marked so as to identify them, signed by the president, and attached to the proceedings.]

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

(2.)\* .....  
appears as prosecutor, and takes his place.

The above-named prisoner is brought before the Court.

#### VARIATION.

..... appears as counsel for the prosecutor.

..... appears to assist [*or as counsel for*] the prisoner.

The names of the President and Members of the Court are read over in the hearing of the prisoner, and they severally answer to their names.

*Question by the President.*—Do you object to be tried by me as the President, or by any of the officers whose names you have read read over?

*Answer by Prisoner.*—No.

[*Instruction.*—The questions are to be numbered throughout consecutively in a single series. The letters Q and A in the margin may stand for Question and Answer respectively.]

#### VARIATIONS.

##### *Challenging Officers.*

*Answer.*—I object to .....

*Question to the Prisoner.*—Do you object to any other officer?

[This question must be repeated until all the objections are ascertained.]

*Answer.*— .....

*Question to the Prisoner.*—What is your objection to.....  
(*the junior officer objected to.*)

*Prisoner.*— .....

The prisoner in support of his objection to.....,  
requests permission to call....., &c., &c.

..... is called into Court, and is questioned by the prisoner.

The Court is closed to consider the objection.

*Decision.*—The Court disallow the objection.

The Court is reopened and the above decision is read to the prisoner; *or,*

*Decision.*—The Court allow the objection.

---

\* Here state Rank and Name and Regiment (if any).



The Court is reopened and the above decision is made known to the prisoner.

..... retires, or, in the case of the president, the Court adjourn.

*Fresh Member.*—\*..... takes his place as a member of the Court.

He appears to the Court to be eligible and not disqualified to serve on this Court-martial.

*Question to Prisoner.*—Do you object to be tried by ..... [the fresh member]?

*Prisoner.*—.....

*Question to the Prisoner.*—What is your objection to ..... (the junior of the officers objected to)?

[This objection will be dealt with in the same manner as the former objection.]

The Court adjourn for the purpose of fresh members being appointed.

The Court are of opinion that in the interests of justice and for the good of the service it is expedient to adjourn for the purpose of fresh members being appointed, because [here state the reasons].

At ..... o'clock on ..... the Court resume their proceedings, and an Order appointing another president [*or* fresh officers] is read, marked ....., and attached to the proceedings.

The Court satisfy themselves with respect to such president [*or* fresh officers] as provided by Rule of Procedure 22.

[*Instruction.*—The procedure as to challenging a new president and fresh officers and the procedure, if any objection is allowed, will be the same as above.]

The president and members of the Court as constituted after the above proceedings are as follows :—

PRESIDENT.		
<i>Rank.</i>	<i>Name.</i>	<i>Regiment.</i>
.....	.....	.....
MEMBERS.		
<i>Rank.</i>	<i>Name.</i>	<i>Regiment.</i>
.....	.....	.....
.....	.....	.....
.....	.....	.....

The President, Members, and Judge Advocate are duly sworn [also any officer under instruction.]

---

\*Insert Rank, Name, and Regiment.

[*Instruction.*—1. The witnesses if in Court should be ordered out of Court at this stage of the proceedings.

2. Also any interpreter and shorthand writer should be now sworn.]

*Question to the Prisoner.*—Do you object to ..... as interpreter?

*Answer.*—.....

[*Instruction.*—In case of objection the same form will be adopted as in the case of an objection to a member of the Court.]

*Question.*—Do you object to ..... as shorthand writer?

*Answer.*—.....

[*Instruction.*—In case of objection the same procedure will be followed as in the case of an objection to a member of the Court.]

#### CHARGE-SHEET.

(3.) The charge-sheet is signed by the president, marked ....., and annexed to the proceedings.

#### VARIATION.

If the prisoner has claimed to be tried in lieu of submitting to the summary award of his commanding officer—

The prosecutor informs the Court that the prisoner is tried by this Court at his own request, in lieu of being dealt with summarily by his commanding officer.

The prisoner is arraigned upon each charge in the above-mentioned charge-sheet.

*Question to the Prisoner.*—Are you guilty or not guilty of the [first] charge against you, which you have heard read?

*Answer.*—.....

[*Instructions.*—Where there is more than one charge the foregoing question will be asked after each charge is read, the number of the charge being stated.]

#### VARIATIONS.

The prisoner objects to the charge.

*Question to the Prisoner.*—What is your objection?

*Answer.*—.....

The Court is closed to consider their decision.

*Decision.*—The Court disallow the objection [*or* the Court allow the objection, and agree to report to the convening officer].

The Court is reopened, and the above decision is read to the prisoner.

The Court proceed to the trial [*or* adjourn],

*or,*

The prisoner pleads to the general jurisdiction of the Court.

*Question to the Prisoner.*—What are the grounds of your plea?

*Answer.*—.....

*Question.*—Do you wish to produce any evidence in support of your plea?

*Answer.*—.....

Witness is examined on oath.

[*Instruction.*—The examination, &c. of the witnesses called by the prisoner and of any witnesses called by the prosecutor in reply will proceed as directed below in paragraph (5.) The prosecutor will be entitled to reply after all the evidence is given.]

The Court is closed to consider their decision.

*Decision.*—The Court allow [*or* overrule the plea, *or* resolve to refer the point to the convening authority, *or* decide specially that .....].

The Court is reopened, and the above decision is read to the prisoner.

The Court proceed to the trial [*or* adjourn].

*Refusal to Plead.*—As the prisoner does not plead intelligibly [*or* refuses to plead to the above charge, *or* does not plead guilty to the above charge] the Court enter a plea of “not guilty.”

As the prisoner does not plead “guilty” to all the charges, the Court proceed with the trial as if he had not pleaded “guilty” to any charge.

#### PROCEEDINGS ON PLEA OF GUILTY.

(4.) [*Instruction.*—If the trial proceeds upon any charges to which there is a plea of not guilty, the Court will not proceed upon the plea of guilty until after the finding on those other charges; in that case the charge to which the prisoner has pleaded guilty must be read to him again before the following question is asked.]

*Question to the Prisoner.*—Do you wish to make any statement in reference to this charge to which you have pleaded guilty?

The prisoner in reference to the charge says:—

A.—.....

[*Instruction.*—The substance of the prisoner’s statement must be taken down, and should be taken down in the first person, and as nearly as possible in his own words.]

#### VARIATION.

The Court being satisfied from the statement of the prisoner that he did not understand the effect of the plea of guilty alters the plea recorded, and enters a plea of not guilty.

[*Instruction.*—The Court will then proceed in respect of this charge as in paragraph 5.]

The Court find, in pursuance of the above plea, that the prisoner [Number—rank—name—regiment] is guilty of the charge [all the charges];

*or,*

is guilty of the ..... charge, and is not guilty of the ..... charge.

The summary of evidence [*or* abstract of evidence] is read, marked ....., signed by the President, and attached to the proceedings.

[*Instruction.*—If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence and to enable the confirming officer to know all the circumstances connected with the case will be taken as in paragraph 5. No address will be allowed.]

*Question to the Prisoner.*—Do you wish to call any witnesses as to character?

A.—Yes. [No.]

[*Instruction.*—(1.) The examination, &c., of witnesses as to character will proceed as in paragraph 6.

(2.) Evidence as to character and particulars of service will be taken as in paragraph 10.]

*Question to the Prisoner.*—Do you wish to make any statement in mitigation of punishment?

A.—No. Or,

The prisoner in mitigation of punishment says [or, if the statement is in writing, hands in a written statement, which is read, marked ....., signed by the President, and attached to the proceedings.]

[*Instruction.*—If the prisoner's statement is not in writing, and is delivered by himself, the material portions should be taken down in the first person, and as nearly as possible in his own words.

If the statement is not in writing and not delivered by the prisoner himself, the material portions should be recorded.

In either case any matter which is requested by or on behalf of the prisoner to be recorded should be recorded, and care must be taken, whether a request is made or not, to record every point brought forward in mitigation of punishment.]

#### VARIATION.

The Court give permission to the prisoner to call witnesses to prove his above statement that [here specify the statement which is to be proved.]

[*Instruction.*—(1.) The examination, &c., of witnesses called in pursuance of this permission will proceed in the same manner as witnesses to character called under paragraph 6.

(2.) The procedure as to sentence, recommendation to mercy, and confirmation, will be as in paragraphs 10 and 12.]

#### PROCEEDINGS ON PLEA OF NOT GUILTY.

(5.) [If the prosecutor makes an address.] The prosecutor makes the following address [or, if the address is written, hands in a written address, which is read, marked ....., signed by the President, and attached to the proceedings.]

[*Instruction.*—Where the address of the prosecutor is not in writing the Court should record so much as appears to them material, and so much as the prosecutor requires to be recorded.]

The prosecutor proceeds to call witnesses.

*First witness for prosecution.*

\* ....., being duly sworn, is examined by the prosecutor.

Cross-examined by the Prisoner.

Reexamined by the Prosecutor.

Examined by the Court.

His evidence is read to the witness as directed by Rule of Procedure 81 (B.)

The witness withdraws.

VARIATIONS.

The prisoner declines to cross-examine this witness.

[*Instruction.*—In every case where the prisoner does not cross-examine a witness for the prosecution this statement is to be made, in order that it may appear on the face of the proceedings that he has had the opportunity given him of cross-examination.]

The Court, at the request of the prisoner, allows the cross-examination of the witness to be postponed.

The prisoner [*or* the prosecutor] objects to the following question: The Court is closed to consider their decision.

The Court overrule [*or* allow] the objection, and the Court is reopened and the decision announced.

The witness, on his evidence being read to him, makes the following explanation *or* alteration:

Examined by the prosecutor as to the above explanation *or* alteration.

Examined by the prisoner as to the above explanation *or* alteration.

The prosecutor and prisoner decline to examine him respecting the above explanation *or* alteration.

*Second witness for prosecution.*

....., duly sworn, is examined by the prosecutor.

(*The examination, &c., of this and every other witness proceeds as in the case of the first witness.*)

---

\* State his name, his number, rank, and regiment (if any), or other description.

## VARIATION.

The Court think it expedient to continue to sit after six o'clock in the afternoon, on the ground that [*state the grounds.*]

At ..... o'clock the Court adjourn until ..... o'clock on the .....

*Second day.*—On the ..... of ..... 18....., at..... o'clock, the Court reassemble, pursuant to adjournment; present, the same members as on the ..... of .....

## VARIATIONS.

[*Instructions.*—(1.) If a member is absent, and his absence will reduce the Court below the legal minimum, and it appears to the members present that the absent member cannot attend within a reasonable time, the president or senior member present will thereupon report the case to the convening officer.

(2.) If either the President or the Judge Advocate is absent, and cannot attend within reasonable time, the Court will adjourn, and the President or senior member present will thereupon report the case to the convening authority. (See Rule of Procedure 65.) ]

*Absent member.*—[*Rank, Name, Regiment*] being absent.  
(*the absence is accounted for.*)

A medical certificate [*or letter, or as the case may be*] is produced, read, marked ....., and attached to the proceedings.

The Court adjourn until .....

*or,*

There being present ..... (*not less than the legal minimum*) members, the trial is proceeded with.

*New President.*—An order bearing date ....., appointing ..... (*the senior member*) president of the court-martial in the place of ....., who ....., is read, marked ....., signed by the President, and attached to the proceedings.

The trial is proceeded with.

*New Judge Advocate.*—An order bearing date ....., appointing ..... to act as Judge Advocate in the place of ....., who ....., is read, marked ....., signed by the President, and attached to the proceedings, and ..... is duly sworn.

The trial is proceeded with.

[*Instructions.*—(1.) If the Court, in consequence of the adjournment having been prolonged by the senior officer on the spot, or otherwise, do not meet on the day to which they previously adjourned, or if the adjournment was until further orders, the words "pursuant to adjournment" will be omitted from the above Form, and the cause of their meeting at the above time will be entered in the proceedings.

(2.) If the place of meeting has been altered by orders, or otherwise, the place of meeting and the reason for meeting at that place will be entered in the proceedings.]

Examination [cross-examination] of .....  
continued.

The prosecution is closed.

DEFENCE.

*Question to Prisoner.*—Do you intend to call any witness in your defence?

*Answer.*—Yes [No].

*Question.*—Is he a witness as to character only?

*Answer.*— .....

VARIATION.

[If the prisoner is defended by counsel or by an officer having the rights of counsel.]

Do you wish to make any statement in addition to the address made by your counsel [*or* ]?

(6.) [*Instruction.*—If the prisoner calls no witnesses, or witnesses as to character only, adopt this and omit 7.]

If a prisoner is defended by counsel or an officer having the rights of counsel, and does not wish to make a statement in addition to the address by such counsel or officer, adopt this and omit 7.]

The prosecutor addresses the Court upon the evidence for the prosecution as follows [*or*, if the address is written, hands in a written address, which is read, marked ....., signed by the President, and attached to the proceedings.]

[*Instruction.*—Where the address of the prosecutor is not in writing the Court should record so much as appears to them material and so much as the prosecutor requires to be recorded.]

*Question to Prisoner.*—Have you anything to say in your defence?

VARIATION.

The Court, at the request of the prisoner, adjourns until ..... to enable him to prepare his defence.

The prisoner in his defence says ..... [*or* hands in a written address, which is read, marked ....., signed by the President, and attached to the proceedings.]

VARIATION.

[*Instruction.*—If the prisoner is defended by counsel or by an officer having the rights of counsel.]

Do you wish to make any statement in addition to the address made by your counsel [*or* ]?

[*Instruction.*—If a prisoner's address is not in writing and is delivered by himself, the material portions should be taken down in the first person, and as nearly as possible in his own words.

If the address is not in writing and not delivered by the prisoner himself, the material portions should be recorded.

In either case any matter which is requested by or on behalf of the

prisoner to be recorded should be recorded, and care must be taken, whether a request is made or not, to record every point brought forward in the defence or in mitigation of punishment.]

The prisoner calls the following witnesses as to character:

*First witness as to character.*

\*..... is duly sworn.

Examined by the Prisoner.

.....

Cross-examined by the Prosecutor.

.....

Reexamined by the Prisoner.

.....

Examined by the Court.

.....

His evidence is read to the witness as directed by Rule of Procedure 81 (B.)

The witness withdraws.

#### VARIATION.

The prisoner declines to cross-examine this witness.

The witness, on his evidence being read to him, makes the following explanation *or* alteration:

.....

Examined by the prisoner as to the above explanation *or* alteration.

.....

Examined by the prosecutor as to the above explanation *or* alteration.

.....

The prisoner and prosecutor decline to examine him respecting the above explanation *or* alteration.

(7.) [Instruction.—If the prisoner calls witnesses who are not as to character only, or if a prisoner defended by counsel, or by an officer having the rights of counsel, wishes to make a statement in addition to the address by such counsel or officer, omit Par. 6 and adopt 7.]

*Question to Prisoner.*—Have you anything to say in your defence?

#### VARIATION.

The Court, at the request of the prisoner, adjourn until ..... to enable him to prepare his defence.

The prisoner in his defence says ....., [*or*, if this address is in

---

\* Insert name, and his number, rank, and regiment (if any), or other description.



writing, hands in a written address, which is read, marked ....., signed by the President, and attached to the proceedings.]

[*Instructions.*—(1.) If a prisoner's defence is not in writing and is delivered by himself, the material portions should be taken down in the first person, and as nearly as possible in his own words.

(2.) If the address is not in writing and not delivered by the prisoner himself, the material portions should be recorded.

(3.) In either case any matter which is requested by or on behalf of the prisoner to be recorded should be recorded, and care must be taken, whether a request is made or not, to record every point brought forward in the defence or in mitigation of punishment.]

The prisoner calls the following witnesses:—

\*..... is duly sworn.

Examined by the Prisoner.

.....

Cross-examined by the Prosecutor.

.....

Reëxamined by the Prisoner.

.....

Examined by the Court.

.....

His evidence is read to the witness as directed by Rule of Procedure 81 (B.)

The witness withdraws.

#### VARIATIONS.

The prosecutor declines to cross-examine this witness.

The witness, on his evidence being read to him, makes the following explanation *or* alteration :

.....

Examined by the prisoner as to the above explanation *or* alteration.

.....

Examined by the prosecutor as to the above explanation *or* alteration.

.....

The prisoner and prosecutor decline to examine him respecting such explanation *or* alteration.

[Where the prisoner is defended by counsel or an officer having the rights of counsel.] The prisoner makes the following statement in addition to the address by his counsel [*or* ].

The prosecutor [by leave of the Court] calls witnesses in reply.

---

\* Insert the name, and his No., Rank, and Regiment (if any), or other description.

The prisoner makes the following address [*or*, if the address is in writing, hands in a written address, which is read, marked ....., signed by the President, and attached to the proceedings].

The prosecutor makes the following reply [*or*, if the reply is in writing, hands in a written reply, which is read, marked ....., signed by the President, and attached to the proceedings];

*or*,

The prosecutor declines to make a reply.

[*Instruction.*—Where the reply of the prosecutor is not in writing the Court should record so much as appears to them material, and so much as the prosecutor requires to be recorded.

If the prisoner's address is not in writing and is delivered by himself, the material portions should be taken down in the first person, and as nearly as possible in his own words.

If the address is not in writing and not delivered by the prisoner himself, the material portions should be recorded.

In either case any matter which is requested by or on behalf of the prisoner to be recorded should be recorded, and care must be taken, whether a request is made or not, to record every point brought forward in the defence or in mitigation of punishment.]

The Judge Advocate makes the following summing up [*or*, if the summing up is in writing, hands in a written summing up, which is read, marked ....., signed by the President, and attached to the proceedings].

#### VARIATIONS.

The Court, at the request of the prisoner, adjourn until ..... to enable him to prepare his address.

The Court, at the request of the prosecutor, adjourn until ..... to enable the prosecutor to prepare his reply.

The Judge Advocate and the Court think a summing up unnecessary;

*or*,

The Court, at the request of the Judge Advocate, adjourn till ..... to enable him to prepare his summing up.

#### FINDING.

(8.) The Court is closed to consider their finding.

The Court find that the prisoner (No.—Rank—Name—Regiment) ..... is not guilty of the ..... charge [and honourably acquit him of the same], but is guilty of the .....

*or*,

is guilty of the charge [all the charges];

*or*,

is guilty of the ..... charge, and guilty of the ..... charge with the exception of the words [*or*, with the exception that] .....

*or*,

is not guilty of desertion, but is guilty of absence without leave;

[*Instruction.*—Any special finding allowed by Section 56 of the Army Act, 1881, may be expressed in this form.]

*or,*

find that the prisoner did [Here set out such particulars in any charge as the court find to be proved], but the Court doubt whether such facts constitute in law the offence stated in the ..... charge, or in the ..... charge, or in the ..... charge, and therefore they find him guilty of the offence in such one of those charges as the facts in law constitute;

*or,*

adjourn for the purpose of consulting the convening officer.

On reassembly on the ..... day of ....., and on reading the opinion of ..... which is marked ..... and annexed to the proceedings, find that the prisoner, &c.

#### PROCEEDINGS ON ACQUITTAL OF ALL THE CHARGES.

(9.) The Court find that the prisoner (No.—Rank—Name—Regiment) ..... is not guilty of the charge [*or, all the charges*];

*or,*

is not guilty of the charge [*or all the charges*] and honourably acquit him of the same.

The findings are read in open Court, and the prisoner is released.

Signed at ....., this ..... day of ..... 18.....

.....  
Judge Advocate.

.....  
President.

#### VARIATION.

The Court find that the prisoner [number, rank, name, regiment] is, by reason of insanity, unfit to take his trial,

*or,*

is guilty of the ..... charge, *or* ..... charges, but was insane at the time of the commission of the offences specified in those charges.

Signed at ....., this ..... day of ..... 18.....  
(Signature.)

.....  
Judge Advocate.

.....  
President.

Confirmed:

At ..... this ..... day of .....  
(Signature of Confirming Authority.)

#### PROCEEDINGS ON CONVICTION.

##### *Before Sentence.*

(10.) The Court being reopened, the prisoner is again brought before it. [Rank—Name—Regiment] is duly sworn.

*Question by the President.*—Have you any evidence to produce as to the character and particulars of service of the prisoner?

*Answer by the Witness.*—I produce this statement.

The witness hands in the statement, which should be in the following form :

*Statement as to Character and particulars of Service of Prisoner.*

(Rank—Name—No.)....., of ..... Regiment  
[or as the case may be].

(1.) The following is a fair and true summary of the entries of the prisoner's name in the defaulters' book, exclusive of convictions by a court-martial or a civil court :—

	Within last 12 months.	Since Enlistment.	
For .....			times.
For .....			times.

or,

The prisoner's name does not appear in the defaulters' book.

[*Instruction.*—If the charge is for drunkenness the entries for drunkenness must be stated separately.]

(2.) The prisoner has not been previously convicted.

or,

The previous convictions of the prisoner by a court-martial or a civil court are set out in the Schedule annexed to this statement.

(3.) The prisoner is not under sentence at the present time.

or,

The prisoner at the present time is under sentence for ....., beginning on the ..... day of .....

(4.) The prisoner has been in confinement, awaiting trial on the present charges for ....., beginning on the ..... day of .....

(5.) The prisoner's age is stated in his attestation paper to be .....

(6.) The date of his attestation specified in his attestation paper.....

(7.) The service which the prisoner is allowed to reckon towards discharge or transfer to the reserve is .....

(8.) The prisoner is entitled to deferred pay in respect of ..... service.

(9.) The prisoner is entitled to reckon ..... service for the purpose of determining his pension, &c.

[*Instruction.*—If the court is a general or district court-martial there should be added to the above the following:]

(10.) The prisoner is in possession of or entitled to no military decoration or military reward which the court can forfeit [or is in possession of or entitled to (state any military decoration or reward which the court can forfeit).]

(11.) (If the prisoner is a warrant officer not holding an honorary commission.) The prisoner before he was made a warrant officer last held the regimental rank of .....

(12.) (In the case of an officer or a warrant officer holding an honorary commission.) The prisoner holds in the army the [honorary] rank of ..... dated ....., and in his regiment [or corps or department] the rank of ..... dated .....

[*Instruction.*—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.]

## SCHEDULE

Of convictions by a court-martial or civil court of prisoner. No.....  
Rank ....., Name ....., of ..... regiment [*or* as the  
case may be].

[*Instruction.*—A verbatim extract from the regimental books stating  
these convictions must be inserted.]

I hereby certify that the foregoing Schedule of convictions is a true  
extract from the regimental books in my custody.

Signed this ..... day of .....

A. B.

The above statement [with the Schedule of convictions] is read, is  
marked ....., signed by the President and annexed to the pro-  
ceedings.

*Question by the President.*—Is the prisoner the person named in the  
statement which you have heard read?

*Answer by the Witness.*—.....

*Q.*—Have you compared the contents of the above statement with  
the regimental books?

*A.*—.....

*Q.*—Are they true extracts from the regimental books, and is the  
statement of entries in the defaulters' book a fair and true summary of  
those entries?

*A.*—.....

Cross-examined by the Prisoner.

.....

Reëxamined.

.....

*Or*, the prisoner declines to cross-examine this witness.

[*Instruction.*—Any further question will be put and any evidence  
produced which the Court require as to any point respecting the char-  
acter and service of the prisoner on which the Court desire to have in-  
formation for the purpose of their sentence.

At the request of the prisoner, or by the direction of the Court, the  
regimental books, or a certified copy of the material entries therein,  
must be produced for the purpose of comparison with the statement.]

The prisoner is entitled to call the attention of the Court to any en-  
tries in the regimental books, or in the certified copy above mentioned,  
and to show that they are inconsistent with the statement.

The Court is closed to consider their sentence.

## SENTENCE.

[*Instruction.*—The provisions of sections 44, 122, and 183 of the Army  
Act, 1881, must be carefully attended to by the Court in passing sen-  
tence.]

The Court sentence the prisoner (No.—Rank—Name—Regiment.)

[*Instruction.*—The sentence is to be marginally noted in every case.]

In the case of an officer :—

- (a) To suffer death by being shot [hanged].
- (b) To suffer penal servitude for the term of ..... years [or for life].
- (c) To be imprisoned [with hard labour] for .....

[*Instruction*.—(1.) As to the term of imprisonment, see below in the case of a soldier.

- (2.) A sentence of cashiering should precede a sentence to imprisonment or penal servitude.]

(d) To be cashiered.

(e) To be dismissed from Her Majesty's service.

(f) [Where the officer's army rank is superior to his regimental rank.]

To take rank and precedence as ..... in the ..... regiment as if his appointment to that regiment bore date the ..... day of ....., and to take rank and precedence in the army as if his appointment as ..... bore date the ..... day of .....

[Or, where the officer's army and regimental rank are the same].

To take rank and precedence in the ..... regiment and in the army as if his appointment as ..... bore date the ..... day of .....

[Or, where the officer has no regimental rank.]

To take rank and precedence in the army as if his appointment as ..... in the army bore date the ..... day of .....

[*Instruction*.—In each case the form may be varied so that the Court may exercise the power under the Army Act, 1881, s. 44 (f), and Rule of Procedure 46, of sentencing to forfeiture of seniority either in the corps, or in the army, or in both.]

In the case of an officer in the Indian Staff Corps: [see s. 180 (2) (e.)]

To forfeit ..... years [or all] of his staff service [and army service], or as the case may be.

(g) To be reprimanded [or severely reprimanded].

(h) To forfeit the ..... [state the medal, clasp, and decoration, or any of them, which is to be forfeited] with any annuity or gratuity attached thereto.

(i) To be put under stoppages of pay until he has made good the sum of ....., or as the case may be.

In the case of a soldier:

(j) To suffer death by being shot [hanged].

(k) To suffer penal servitude for the term of ..... years [or for life].

(l) To suffer summary punishment, that is to say, field imprisonment No. 1, for ..... days.

(m) To suffer summary punishment, that is to say, field imprisonment No. 2, for ..... days.

(n) To be imprisoned [with hard labour] for .....

[*Instruction*.—(1.) If a prisoner at the time of sentence is undergoing imprisonment under a former sentence, the new sentence must not ex-

ceed such a term as will make up a period of two years from the date of the former sentence.

(2.) In the case of a non-commissioned officer a sentence of reduction to the ranks should precede a sentence to imprisonment or penal servitude, although the latter sentence necessarily involves a reduction to the ranks.]

- (n) To be discharged with ignominy from Her Majesty's service.
- (o) [If a volunteer] To be dismissed from Her Majesty's service.
- (p) [If a non-commissioned officer]—
  - (1.) To be reduced to the rank of sergeant; *or*
  - (2.) To be reduced to the rank of corporal; *or*
  - (3.) To be reduced to the rank of bombardier; *or*
  - To be reduced to the rank of second corporal; *or*
  - (4.) To be reduced to the ranks.
- (q) To be fined.
- (r) To be put under stoppages of pay until he has made good the value of the following articles, viz.:  
 [*or* [and] until he shall have made good the sum of .....  
 ....., in respect of ..... [state the circumstances in respect of which the same is awarded].
- (s) To forfeit ..... [state number or all] good-conduct badge [or badges] with the pay attached thereto.  
 To forfeit deferred pay in respect of ..... [all or calendar months or ..... years] previous service.  
 To forfeit ..... [all or ..... years, or ..... calendar months] past service for the purpose of determining pension.  
 To forfeit the ..... [state the medal, clasp, and decoration, or any of them, which is to be forfeited], with any annuity or gratuity attached thereto.

[*Instructions*.—(1.) An offender may be sentenced to all or any of the above forfeitures.

(2.) In the case of a warrant officer a district court-martial must use one of the following forms; a general court-martial may use them in lieu of, or in addition to, the foregoing forms. See s. 182 (2). ]

- (t) To be dismissed from the service.  
*or,*
- (u) To be suspended from rank, pay, and allowances for the period of .....  
*or,*
- (v) To be reduced in the list of his rank as if his appointment thereto bore date the ..... day of .....  
*or,*  
To be reduced to an inferior class of warrant officer; that is to say, to .....  
*or,*
- (w) [If he was originally enlisted as a soldier, but not otherwise] To be reduced to the ranks.  
*or,*  
To be transferred to the ..... corps in the rank of .....

## RECOMMENDATION TO MERCY.

The Court recommend the prisoner to mercy on the ground that .....  
 The Court recommend that ..... of the service forfeited  
 under section 79 of the Army Act, 1881, shall be restored on the  
 ground that .....

## SIGNATURE.

Signed at ....., this ..... day of ....., 18...  
 ....., Judge Advocate. ...., President.

## REVISION.

(11.) At ....., on the ..... day of ....., at .....  
 o'clock, the Court reassemble by order of .....  
 for the purpose of considering their .....  
 Present: the same members as on the .....

## VARIATION.

[*Instructions.*—If a member is absent and the absence will reduce the  
 Court below the required minimum, or he is the President, and it appears  
 to the members present that such absent member cannot attend within  
 a reasonable time, the President, or, in his absence, the senior member  
 present, shall thereupon report the case to the convening officer.]

[Rank, name, regiment] being absent.

[The absence is accounted for.]

A medical certificate [*or* letter, *or* as the case may be] is  
 produced, read, marked ....., and attached  
 to the proceedings.

There being present ..... [not less than the required  
 minimum] members, the Court proceeds.

The letter [order *or* memorandum] directing the reassembly of the  
 Court for the revision, and giving the reasons of the confirming authority  
 for requiring a revision of the [finding] [finding and sentence] [*or* sen-  
 tence] is read, marked ....., signed by the President, and at-  
 tached to the proceedings.

The Court having attentively considered the observations of the con-  
 firming authority and the whole of the proceedings,

*a.* do now revoke their finding and sentence, and are of opinion,  
 &c.

*or,*

*b.* do now revoke their sentence, and now sentence the prisoner,  
 &c., &c.

*or,*

*c.* do now respectfully adhere to their [sentence *or* finding and  
 sentence].

Signed at ....., this ..... day of ....., 18...  
 ....., Judge Advocate. ...., President.



## CONFIRMATION.

(12.) Confirmed.

<sup>or,</sup>  
I vary the sentence so that it shall be as follows .....,  
and confirm the finding and the sentence as so varied.

<sup>or,</sup>  
I confirm the finding and sentence of the Court, but [mitigate, remit,  
<sup>or</sup> commute .....].

<sup>or,</sup>  
[Where it is necessary to confirm the special finding on several alter-  
native charges.]

I confirm the finding on ..... and ..... charges, and I  
confirm the special finding relating to the ..... and .....  
charges, and declare that that finding amounts to a finding of guilty on  
the ..... charge, and of not guilty on the ..... and  
.....charges.

I confirm the sentence [but mitigate, remit, <sup>or</sup> commute].

<sup>or,</sup>  
[Where the confirming officer desires partly to reserve his confirma-  
tion.]

I confirm the finding of the Court on the ..... and .....  
charges, and reserve for confirmation by superior authority the finding  
on the ..... and ..... charges, and the sentence.

<sup>or,</sup>  
I confirm the findings of the Court, but reserve the sentence for con-  
firmation by superior authority.

<sup>or,</sup>  
I confirm the findings of the Court and the sentence of the Court as  
to ....., and reserve the sentence so far as it ..... for  
confirmation by superior authority.

Signed at ....., this ..... day of .....,  
18...

(Signature of Confirming Authority.)

[*Instruction.*—Any remarks of the confirming authority are to be  
added separately after the confirmation, and a space of at least half a  
page is to be left for the purpose.]

[Where the declaration respecting a special finding on alternative  
charges is added subsequently to the confirmation (Rule 54).]

I declare that the special finding relating to the ..... and .....  
charges amounts to a finding of guilty on the ..... charge, and of  
not guilty on the ..... and ..... charges.

Signed at ....., this ..... day of .....,  
18...

(Signature of authority.)

**Form of Summons.***Form of Summons to a Civil Witness.*

To .....

Whereas a ..... court-martial has been ordered to assemble at ..... on the ..... day of ..... 18..., for the trial of ....., of the ..... regiment: I do hereby summon and require you A. .... B. .... to attend, as a witness, the sitting of the said Court at ..... on the ..... day of ....., at ..... o'clock in the forenoon [and to bring with you the documents hereinafter mentioned, namely, .....], and so to attend from day to day until you shall be duly discharged, whereof you shall fail at your peril.

Given under my hand at ..... on the ..... day of ..... 18....

(Signature) .....

Convening officer [or Judge Advocate or President of the Court or Commanding Officer of the Prisoner.]

**Form for Assembly and Proceedings of Summary Court-Martial.****PROCEEDINGS.**

\*At ....., this ..... day of ..... 18...

*Order convening the Court.*

Whereas it appears to me that the persons named in the annexed schedule and being subject to military law have committed the offences in the said schedule mentioned, and I, the undersigned, an officer now in command of ..... on active service, am of opinion that it is not practicable, having due regard to the public service, to convene an ordinary court-martial to try such offences [† or to delay the trial for reference to a superior qualified officer], I hereby convene a summary court-martial to try the said persons, and to consist of—

**PRESIDENT.**

<i>Rank.</i>	<i>Name.</i>	<i>Regiment.</i>
.....	.....	.....

**MEMBERS.**

<i>Rank.</i>	<i>Name.</i>	<i>Regiment.</i>
.....	.....	.....
.....	.....	.....
.....	.....	.....

[† I am of opinion that three officers are not available, having due regard to the public service.]

(Signed) .....

\* State the place.

† Omit, except where convening officer is not a commanding officer, and is below rank of field officer.

‡ Omit, except where the court-martial consists of two officers only.

*Certificate of President as to Proceedings.*

I certify that the above court assembled on the ..... day of ..... and duly tried the persons named in the said schedule, and that the plea, finding, and sentence in the case of each such persons were as stated in the third and fourth columns of that schedule.

Signed this ..... day of ..... ..

C. D.,

President of the Court-martial.

*Confirmation.*

I have dealt with the findings and sentences in the manner stated in the last column of the above schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences, and I am of opinion, with reference to the sentences of summary punishment mentioned in the schedule, that imprisonment cannot, with due regard to the public service, be carried into execution, [† and I am of opinion that it is not practicable, having due regard to the public service, to delay the cases for confirmation by any superior qualified authority.]

Signed this ..... day of ..... 18...

E. F.,

Field [or General] Officer in the force [or commanding .....].

*Confirmation of reserved sentences.*

I have dealt with the reserved findings and sentences in the manner stated in the last column of the schedule, and, subject to what I have there stated, I hereby confirm the said reserved findings and sentences.

Signed this ..... day of .....

G. H.,

General [Field] Officer in the force.

*Confirmation of sentence of death or penal servitude.*

Subject to what I have stated in the last column of the schedule I hereby confirm the [finding and] sentence of death in the case of ..... and of penal servitude in the case of ..... [\* and in the case of the above sentences of death I am of opinion that by reason of † ..... it is not practicable, having due regard to the public service, to delay the case for confirmation by any qualified officer superior to myself].

Signed this ..... day of .....

J. K.,

General [Field] Officer in chief command of the forces.

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† Omit, excepting where under rules it is ordinarily the duty of the confirming officer to reserve the case.

\* Omit where confirmed by officer in chief command.

‡ State, according to the circumstances, the nature of the country, or the great distance, or the operations of the enemy.

## SCHEDULE.

Date ..... 18...

No.....

Name of alleged Offender.*	Offence charged.	Plea.	Finding, and if convicted, Sentence.†	How dealt with by confirming Officer.
Peter Smith, (sutler.)	Offence against person of inhabitant of country.	Guilty.	Guilty. Field imprisonment No. 1 for ...	Confirmed. I remit ..... E. F.
262, Private James Robinson, 167th Regt.	Breaking into house in search of plunder.	Not guilty.	Guilty. Two months' imprisonment.	Not confirmed. E. F.
564, Private Thos. Jones, 167th Regt	Drunk on post.	Not guilty.	Guilty. Death. Recommended to mercy.	Reserved. [ <i>or</i> confirmed, but commuted to field imprisonment No. 1 for ..... E. F. Confirmed, but commuted to ..... years' penal servitude. J. K.
Person accompanying force (name unknown) white jacket and trousers, scar on right cheek.	Impeding provost marshal.	Not guilty.	Not guilty.	
Soldier in uniform of 167th Regt. (name unknown.)	Offence against property of inhabitant of country.	Not guilty.	Guilty. Field imprisonment No. 2 for ...	Reserved. E. F. Confirmed. G. H.
P. Q. Convening Officer.		C. D. President.		

\* If the name of the person charged is unknown, he may be described as unknown, with such addition as will identify him.

† Recommendation to mercy to be inserted in this column.

## THIRD APPENDIX.

## Forms of Commitment.

## FORM A.

*Form of Order for commitment to Prison of Military Convict sentenced in the United Kingdom to Penal Servitude.*

Whereas [Name—No.—Rank], of the ..... regiment, was, by a general court-martial held at ....., convicted of the offence of ..... (a), and, by a sentence signed on the ..... day of ..... 18 ..., sentenced (b) to suffer penal servitude for ..... years, commencing on the aforesaid day, and such sentence has been confirmed by ....., as required by law : †

Now, therefore, I, the undersigned, the ..... (c) do hereby in pursuance of the Army Act, 1881, and of all other Acts and powers enabling me in this behalf, order that the said convict shall be, as soon as practicable, transferred to a prison in which a prisoner sentenced to penal servitude by a civil court in the United Kingdom can for the time being be confined either permanently or temporarily, there to undergo his sentence according to law.

And I do hereby in pursuance of the above-mentioned Acts and powers order the governor or chief officer of any such prison to whom the convict is brought to receive him into his custody and detain him accordingly, and for so doing this shall be sufficient warrant.

Signed this ..... day of ..... 18 ....

C. D.

## FORM B.

*Form of Order for commitment to Prison of Military Convict sentenced in India, or a Colony, or a foreign Country, to Penal Servitude.*

Whereas [Name—No.—Rank], of the ..... regiment, was, by a general court-martial held at ....., convicted of the offence of ..... (a), and, by a sentence signed on the ..... day of ..... 18 ..., sentenced (b) to suffer penal servitude for ..... years, commencing on the aforesaid day, and such sentence has been confirmed by ....., as required by law : †

(a) If there are several offences state all of them. An offence should be stated in the words of the charge on which the convict was convicted, but if modified by the finding, as so modified ; omitting the statement of particulars giving the details of time, place, and circumstances.

(b) Where the sentence was death but has been commuted to penal servitude, substitute "to suffer death and such sentence was confirmed by ....., as required by law, and was commuted to ..... years' penal servitude, commencing on the aforesaid day."

(c) "Commanding Officer of the said convict," or "Field Marshal Commanding-in-Chief," or "Adjutant-General," or "officer commanding the military district where the said convict is," as the case may be, or where the convict is in Ireland, "the general commanding the forces in Ireland."

† Add, if necessary, "with a remission of years."

Now, therefore, I, the undersigned, the (a) .....

do hereby in pursuance of the Army Act, 1881, and of all other Acts and powers enabling me in this behalf, order that the said convict shall be, as soon as practicable, transferred to a prison in the United Kingdom in which a prisoner sentenced to penal servitude by a civil court in the United Kingdom can for the time being be confined either permanently or temporarily, there to undergo his sentence according to law.

And I do hereby, in pursuance of the above-mentioned Acts and powers, order the governor or chief officer of any such prison as aforesaid to whom the convict is brought to receive him into his custody and detain him accordingly, and for so doing this shall be sufficient warrant.

And for the above purpose, I, the undersigned, do hereby further, in pursuance of the above-mentioned Acts and powers, order that the said convict be removed in military custody by [here state route], or such other route as may be directed by proper authority, to the port at ....., or such other port as may be directed by proper authority, thence to be removed by [here state route] ..... to such prison as aforesaid in the United Kingdom.

And I do hereby, in pursuance of the above-mentioned Acts and powers, order the officer or non-commissioned officer in charge of any provost prison, and also the governor or chief officer of any other prison, military or civil, to whom the convict is brought, to receive the said convict, and detain him so long as appears reasonably necessary with the view to his said removal, and to deliver him when required for the purpose of such removal, and for so doing this shall be sufficient warrant.

Signed at ..... this ..... day of ..... 18.....

C. D.

*In case an alteration of the Route above mentioned becomes necessary. (b)*

Whereas for the purpose of better carrying into effect the above order for the removal of the above-mentioned convict to the United Kingdom it is necessary to alter the route above mentioned, I, the undersigned, the ..... (c), do hereby, in pursuance of the Army Act, 1881, and of all other Acts and powers enabling me in this behalf, order that the said convict be removed in military custody by [here state the route so

(a) "Commander-in-Chief of the Forces in India [or the ..... presidency in India]," "Adjutant-General in India [or the ..... presidency in India]," "officer commanding the forces in the Colony of .....", or "officer commanding the military district [or station] where the said convict is," as the case may be, or, if the convict was sentenced in a foreign country, "officer commanding the army [or force] with which the said convict was serving at the time of his being sentenced," or "officer commanding the military district [or station] where the said convict is," or if he has been brought into India or a colony, any of the officers before in this note mentioned.

(b) This Order can be repeated by any removing authority as often as necessary.  
(c) "Officer commanding the military district [or station] where the above convict is," or "commander-in-chief of the forces in India [or the ..... presidency in India]," or "adjutant-general in India [or the ..... presidency in India]," or "officer commanding the forces in the colony of .....", as the case may be.

far as varied] to ....., thence to be removed as directed by the said order.

Signed at ..... this ..... day of ..... 18 .....  
E. F.

*In case of need the following Order may be made.*

For the purpose of carrying into effect the above order, I, the undersigned, the officer commanding the military (a) district where the above convict is, do hereby, in pursuance of the Army Act, 1881, and of all other Acts and powers enabling me in this behalf, order the governor or chief officer of ..... prison at ..... to receive the above named convict, and to detain him until he can be removed to ..... and to deliver him when required for the purpose of such removal, and for so doing this shall be sufficient warrant.

Signed at ..... this ..... day of ..... 18 .....  
G. H.

### FORM C.

*Form of Order for Commitment to Prison, Military or Civil, of Military Prisoners sentenced either in or out of the United Kingdom to Imprisonment.*

To the governor or chief officer in charge of ..... (b) prison at .....

Whereas [Name—No.—Rank], of the ..... regiment, was by a ..... (c) court-martial held at ..... convicted of the offence of ..... (d), and, by a sentence signed on the ..... day of ..... 18 ....., sentenced (e) to be imprisoned with ..... \*hard labour for ....., commencing on the aforesaid day, and such sentence has been confirmed by ....., as required by law (f):

\* If the sentence does not specify hard labour, alter "with" into "without."

(a) If necessary substitute "station" for district. This order may also be made by any of the officers mentioned in note (c), p. 267.

(b) Insert "Her Majesty's" or as required according to title of prison.

(c) Insert as required "general," "district," "regimental."

(d) If there are several offences state all of them. An offence should be stated in the words of the charge on which the prisoner was convicted, but if modified by the finding, as so modified; omitting the statement of particulars containing the details of time, place, and circumstances.

(e) Substitute, where the original sentence was death or penal servitude which has been commuted to imprisonment, "to suffer death, and such sentence has been confirmed by ..... as required by law, but has been commuted into imprisonment for ..... with ..... † hard labour, commencing on the aforesaid day," or "to suffer ..... years' penal servitude, and such sentence has been confirmed by ..... as required by law, and has been commuted into imprisonment for ..... with ..... † hard labour, commencing on the aforesaid day."

(f) Add, if necessary, "with a remission of ....., " or "but has been mitigated by the omission of the hard labour," or as the case may be.

If the imprisonment was awarded by the commanding officer the form from "Whereas" down to "required by law" will be replaced by the corresponding provision in Form F.

† If the commutation does not specify hard labor, alter "with" into "without."

Now, therefore, I, the undersigned, the ..... (a) do hereby, in pursuance of the Army Act, 1881, and of all other Acts and powers enabling me in this behalf, order you to receive the said military prisoner into your custody and detain him to undergo his said sentence according to law, and for so doing this shall be your warrant.

Signed at ..... this ..... day of ..... 18.....

C. D.

### FORM D.

*Form of Order respecting Imprisonment under Sentence passed out of the United Kingdom and to be undergone in the United Kingdom.*

Whereas [Name—No.—Rank], of the ..... regiment, was by a ..... (b) court-martial held at ..... convicted of the offence of ..... (c), and, by a sentence signed on the ..... day of ....., 18....., sentenced (d) to be imprisoned with ..... \* hard labour for ....., commencing on the aforesaid day, and such sentence has been confirmed by ..... as required by law : (e)

Now, therefore, I, the undersigned, the (g) .....

\* If the sentence does not specify hard labour, alter "with" into "without."

(a) "Commanding officer of the said prisoner," or "officer who confirmed the sentence," or "officer commanding the military district [or station] where the said prisoner is," also in the United Kingdom, "Field Marshal Commanding-in-Chief" or "Adjutant-General," also if the prisoner is in Ireland "general commanding the forces in Ireland," also in India or a colony, "Commander-in-Chief of the forces in India [or in the ..... presidency in India]," or "Adjutant-General in India [or in the ..... presidency in India]," or "officer commanding the forces in the colony of .....", also if the sentence was passed in a foreign country, "officer commanding the army [or force] to which the said prisoner belonged at the time of his being sentenced."

(b) Insert "general," or "district," as required.

(c) If there are several offences state all of them. An offence should be stated in the words of the charge on which the prisoner was convicted, but if modified by the finding, as so modified; omitting the statement of particulars containing the details of time, place, and circumstances.

(d) Substitute, where the original sentence was death or penal servitude which has been commuted to imprisonment, "to suffer death, and such sentence has been confirmed by ..... as required by law, but has been commuted into imprisonment for ..... with [If the commutation does not specify hard labour, alter "with" into "without"] hard labour, commencing on the aforesaid day," or "to suffer ..... years' penal servitude, and such sentence has been confirmed by ..... as required by law, and has been commuted into imprisonment for ..... with ..... hard labour, [If the commutation does not specify hard labour, alter "with" into "without"], commencing on the "aforesaid day."

(e) Add, if necessary, "with a remission of ....." or "but has been mitigated by the omission of the hard labour," or as the case may be.

If the imprisonment was awarded by the commanding officer, the form from "Whereas" down to "required by law" will be replaced by the corresponding provision in Form F.

(g) "Commander-in-Chief of the Forces in India [or in the ..... presidency in India]," or "Adjutant-General in India [or in the ..... presidency in India]," or "officer commanding the Forces in the colony of .....", or officer commanding the military district [or station] where the



being the committing and removing authority, do hereby, in pursuance of the Army Act, 1881, and of all other Acts and powers enabling me in this behalf, order that the said military prisoner shall be transferred and removed to ..... prison at ..... in the United Kingdom, or such other public prison in the United Kingdom as any other competent authority may appoint in this behalf, there to undergo his sentence according to law.

And I do hereby, in pursuance of the said Acts and powers, order the governor or chief officer of any such prison as aforesaid to whom the above prisoner is brought to receive the prisoner into his custody and detain him accordingly, and for so doing this shall be sufficient warrant.

And I do hereby, in pursuance of the said Acts and powers, further order that the said prisoner shall be conveyed in military custody and detained in military custody or in a prison, military or civil, so far as appears necessary or proper for effecting his removal to the said prison in the United Kingdom.

Signed at ..... this ..... day of ..... 18.....

C. D.

*In case of a Committal to any intermediate Prison being necessary. (a)*

For the purpose of carrying into effect the above Order, I, the undersigned, the (b) ..... do hereby, in pursuance of the Army Act, 1881, and of all other Acts and powers enabling me in this behalf, order the governor or chief officer of the ..... prison at ..... to receive the said military prisoner, and detain him until he can be removed, in pursuance of the above Order, and to deliver him when required for the purpose of such removal, and for so doing this shall be sufficient warrant.

Signed at ..... this ..... day of ..... 18.....

E. F.

*Order on arrival of Prisoner in United Kingdom.*

I, the undersigned, commanding the military district where the above-named military prisoner is, being the committing and removing authority, do hereby, in pursuance of the Army Act, 1881, and of all other Acts and powers enabling me in this behalf, order him to be transferred and removed to the ..... prison at ....., to undergo his sentence according to law.

And I do hereby order the governor or chief officer of that prison to receive him, and for so doing this shall be sufficient warrant.

Signed at ..... this ..... day of ..... 18.....

G. H.

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prisoner is, as the case may be, or if the sentence was passed in a foreign country, "officer commanding the army [or force] to which the prisoner belonged at the time of his being sentenced," or, if the prisoner is brought into India or a colony, any of the officers before in this note mentioned.

(a) This Order may be repeated by any authority having power to make it as often as necessary.

(b) "Officer commanding the military district [or station] in which the above-named prisoner is," or any of the officers named in note (c), previous page, or "officer who confirmed the sentence on the above-named prisoner," or "commanding officer of the above-named prisoner."

## FORM E.

*Form of Commitment to Provost Prison on conviction by Court-martial.*

To the officer or non-commissioned officer in charge of the provost prison at .....

Whereas [Name—No.—Rank], of the ..... regiment, was by a ..... (a) court-martial held at ..... convicted of the offence of ..... (b), and, by a sentence signed on the ..... day of ..... 18....., sentenced to be imprisoned with \*hard labour for (c) ....., commencing on the said day, and such sentence has been confirmed by ....., as required by law: (d)

Now, therefore, I, the undersigned, being the commanding officer of the said military prisoner (e), do hereby in pursuance of the Army Act, 1831, and of all other Acts and powers enabling me in this behalf, order you to receive him into your custody to undergo his sentence according to law, and for so doing this shall be your warrant.

Signed at ..... this ..... day of ....., 18...

C. D.

## FORM F.

*Form of Commitment to Provost Prison on award of Imprisonment by Commanding Officer.*

To the officer or non-commissioned officer in charge of the provost prison at.....

Whereas [Name—No.—Rank], of the ..... regiment, was on the ..... day of ....., 18..., awarded by his commanding officer imprisonment with ..... † hard labour for ..... for the offence of.....

Now, therefore, I, the undersigned, being the commanding officer of

\* If the sentence does not specify hard labour, alter "with" into "without."

† If the award does not specify hard labour, alter "with" into "without."

(a) Insert "general," "district," "regimental," as required.

(b) If there are several offences state all of them. An offence should be stated in the words of the charge on which the convict was convicted, but if modified by the finding, as so modified; omitting the statement of particulars containing details of time, place, and circumstances.

(c) Substitute, where the original sentence was death or penal servitude which has been commuted into imprisonment, "to suffer death, and such sentence has been confirmed by ..... as required by law, but has been commuted into imprisonment for ..... with hard labour [If the commutation does not specify hard labour, alter "with" into "without"], commencing on the aforesaid day," or "to suffer ..... years' penal servitude," and such sentence has been confirmed by ..... as required by law, and has been commuted into imprisonment with hard labour [If the commutation does not specify hard labour, alter "with" into "without"] for ..... commencing on the aforesaid day.

(d) Add, if necessary, "with a remission of ....., " or "but has been mitigated by the omission of the hard labour," or as the case may be.

(e) Substitute, if necessary, any officer authorized to sign Form C.

the said military prisoner, do hereby in pursuance of the Army Act, 1881, and of all other Acts and powers enabling me in this behalf, order you to receive him into your custody to undergo his sentence according to law, and for so doing this shall be your warrant.

Signed at ....., this.....day of ....., 18...

C. D.

#### FORM G.

##### *Order for Discharge of Prisoner.*

To the governor or chief officer of..... prison at.....

Whereas [Name—No.—Rank], of the ..... regiment, is now in your custody under a sentence of imprisonment by court-martial:

I, the undersigned, being (a) ....., do hereby order you to discharge the said prisoner.

Signed at ....., this .....day of ....., 18...

E. F.

#### FORM H.

##### *Form of Discharging Order in case of Imprisonment in Provost Prison under the Award of Commanding Officer.*

To the officer or non-commissioned officer in charge of the provost prison at.....

You are hereby required to discharge the prisoner [Name—No.—Rank], of the ..... regiment, now in your custody undergoing his sentence pursuant to the award of his commanding officer.

Signed at ....., this ..... day of ....., 18...

C. D.,

Commanding Officer of the above Prisoner.

(a) *If the order is made in the United Kingdom*, "the officer commanding the military district in which the said military prisoner is," or "the field marshal commander-in-chief," or "the adjutant-general," or "the officer who confirmed the sentence on the prisoner, acting in consequence of a case of necessity without the order of superior authority."

*If the order is made in India*, "the officer commanding the military district [or station] in which the prisoner is," "the commander-in-chief of the forces in India [or in the ..... presidency in India]," or "the adjutant-general in India [or in the ..... presidency in India]," or "the officer who confirmed the sentence on the prisoner, acting in consequence of a case of necessity without the order of superior authority."

*If the order is made in a Colony*, "the officer commanding the forces in the colony of ....., " or "the officer commanding the military district [or station] in which the prisoner is," or "the officer who confirmed the sentence on the prisoner, acting in consequence of a case of necessity without the order of superior authority."

If the prisoner is imprisoned under the award of his commanding officer, the commanding officer may sign this order, making the necessary alterations.

## FORM I.

*Order for Removal of Prisoner to be brought before a Court.*

To the governor or chief officer of ..... prison at .....

Whereas [Name—No.—Rank], of the ..... regiment, is now in your custody undergoing a sentence of imprisonment (a) passed by court-martial:

I, the undersigned, being (b) the officer commanding the military district\* in which the said prisoner is, do hereby in pursuance of the Army Act, 1881, and of all other Acts and powers enabling me in this behalf, order you to deliver the said military prisoner to the officer or non-commissioned officer bringing this order.

And I do hereby order the said officer or non-commissioned officer, and all other officers and non-commissioned officers into whose custody the said prisoner may be delivered, to keep the said prisoner in military custody and bring him to ..... there to appear before a (c) court-martial (d) as a witness, and then to return him to the above-named prison, or to such other prison as may be determined by the proper authority, and to detain him in military custody until he is so returned or is discharged in due course of law, and for so doing this shall be sufficient warrant.

Signed at ....., this ..... day of ....., 18...

J. K.

*If the Prison to which he is returned is altered.*

I, the undersigned, being the officer commanding the military district in which the above-named military prisoner is (b), do hereby in pursuance of the Army Act, 1881, and of all other Acts and powers enabling me in this behalf, order, that he be forthwith returned in military custody to ..... prison at ....., there to undergo the remainder of his sentence.

Signed at ....., this ..... day of ....., 18...

L. M.

\* If necessary substitute "station."

(a) If necessary substitute "awarded by his commanding officer."

(b) Substitute, if necessary, or if in the *United Kingdom*, "the field marshal commanding-in-chief," or "the adjutant-general," or if the prisoner is in *Ireland*, "the general commanding the forces in Ireland," or if the sentence was passed by the commanding officer, "the commanding officer," or if in *India*, "the commander-in-chief of the forces in India [or in the ..... presidency in India]," "the adjutant-general in India [or in the ..... presidency in India]," or "the officer who confirmed the said sentence," or "the commanding officer of the said military prisoner," or if in a colony, "the officer commanding the forces in the colony of .....", or "the officer who confirmed the said sentence," or "the commanding officer of the said military prisoner."

(c) If the facts so require, substitute "civil court."

(d) Substitute, according to the facts, "for trial," or the other reasons for which he is to be brought.

## FORM J.

*Order for Removal of Prisoner for Embarkation.*

To the governor or chief officer of ..... prison, at .....

Whereas [Name—No.—Rank], of the ..... regiment, is now in your custody undergoing a sentence of imprisonment passed by court-martial: (a)

I, the undersigned, being the officer commanding the military district\* in which the said prisoner is (b), do hereby, in pursuance of the Army Act, 1881, and of all other acts and powers enabling me in this behalf, order you to deliver the said military prisoner to the officer or non-commissioned officer presenting this order.

And I do hereby order the said officer or non-commissioned officer, and all officers and non-commissioned officers into whose custody the said prisoner may be delivered, to keep the said prisoner in military custody, and convey him in military custody in such manner as may be directed by military authority, to ....., where the ..... regiment to which he belongs is serving (c), and for so doing this shall be sufficient warrant.

Signed at ..... this ..... day of ..... 18.....

J. K.

## FORM K.

*Order for Removal of Prisoner from one public Prison to another.*

To the governor or chief officer of ..... prison, at .....

Whereas [Name—No.—Rank], of the ..... regiment, is now in your custody undergoing a sentence of imprisonment passed by court-martial: (a)

I, the undersigned, being the ..... (d), do hereby, in pursuance

\* If necessary substitute "station."

(a) If necessary substitute "awarded by his commanding officer."

(b) Substitute if necessary, *if in the United Kingdom*, "field marshal commanding in chief" or "adjutant-general," or *if the prisoner is in Ireland*, "general commanding the forces in Ireland," or *if the sentence was passed by the commanding officer*, "commanding officer of the said prisoner, acting in pursuance of directions from the officer commanding the military district where the prisoner is," or *from one of the above-mentioned officers*.

*If in India*, "commander-in-chief of the forces in India [or in the ..... presidency in India]," or "adjutant-general in India [or in the ..... presidency in India]," or "officer who confirmed the said sentence" [or "commanding officer of the said military prisoner"] acting in pursuance of directions from the officer commanding the military district [or station] where the prisoner is, or *from one of the Indian officers above mentioned*.

*If in a colony*, "officer commanding the forces in the colony of .....", or "officer who confirmed the said sentence" [or "commanding officer of the said military prisoner,"] acting in pursuance of directions from the officer commanding the military district [or station] where the prisoner is [or from the officer commanding the forces in the colony of .....]

(c) If necessary substitute "under orders to serve."

(d) "Commanding officer of the said prisoner," or "officer who confirmed the said sentence," or "officer commanding the military district [or station] where the

of the Army Act, 1881, and of all other acts and powers enabling me in this behalf, order you to deliver the said military prisoner to the officer or non-commissioned officer presenting this order.

And I do hereby order the said officer or non-commissioned officer, and all officers and non-commissioned officers into whose custody the said prisoner may be delivered, to keep the said prisoner in military custody, and convey him in military custody in such manner as may be directed by military authority, to the ..... prison at ....., there to undergo the remainder of his sentence, and for so doing this shall be sufficient warrant.

Signed at ..... this ..... day of ..... 18.....

J. K.

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FORM L. (a)

*Form of Order for temporary detention in Prison or Lock-up.*

To the governor or chief officer of ..... prison, at ..... (b)

Whereas [Name—No.—Rank], of the ..... regiment, is now a prisoner in military custody:

Now therefore I, the undersigned, the commanding officer of the said prisoner, do hereby in pursuance of the Army Act, 1881, and of all other Acts and powers enabling me in this behalf, order you to receive the said prisoner into your custody, and detain him until you receive a further order from me, but not longer than seven days, and for so doing this shall be your warrant.

Signed this ..... day of ..... 18.....

J. K.

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said prisoner is," also if in the United Kingdom, "field marshal commanding in chief" or "adjutant-general," or if the prisoner is in Ireland, "general commanding the forces in Ireland," also if in India or a colony, "commander-in-chief of the forces in India [or in the ..... presidency in India]," or "adjutant-general in India [or in the ..... presidency in India]," or "officer commanding the forces in the colony of ....." also if in a foreign country, "officer commanding the army [or force] to which the said prisoner belonged at the time of his being sentenced."

(a) This form can be used only in the case of a soldier as defined by the Army Act, 1881.

(b) Substitute if necessary "officer in charge of the police station [or other place] at ....."

### Rules for Summary Punishment.

#### RULES FOR SUMMARY PUNISHMENT MADE UNDER THE ARMY DISCIPLINE AND REGULATION (ANNUAL) ACT, 1881.

(1.) WHERE a court-martial can sentence an offender to summary punishment, the court may sentence him for a period not exceeding three months to one of the following summary punishments, namely:—

(a.) Field imprisonment No. 1; or

(b.) Field imprisonment No. 2.

(2.) Where an offender is sentenced to field imprisonment No. 1, he may, during the continuance of his sentence, be punished as follows:—

(a.) He may be kept in irons, *i. e.*, in fetters or handcuffs, or both fetters and handcuffs; and may be secured so as to prevent his escape;

(b.) When in irons he may be attached for a period or periods not exceeding two hours in any one day to a fixed object in such manner that he must remain in a fixed position, but he must not be so attached during more than three out of any four consecutive days, nor during more than twenty-one days in all.

(c.) Straps or ropes may be used for the purpose of these rules in lieu of irons;

(d.) He may be subjected to the like labour, employment, and restraint, and dealt with in like manner as if he were under a sentence of imprisonment with hard labour.

(3.) Where an offender is sentenced to field imprisonment No. 2, the foregoing rule with respect to field imprisonment No. 1 shall apply to him, except that he shall not be liable to be attached in a fixed position as provided by paragraph (b) of rule 2.

(4.) Every portion of a summary punishment shall be inflicted in such a manner as is calculated not to cause injury or to leave any permanent mark on the offender; and a portion of a summary punishment must be discontinued upon a report by a responsible medical officer that the continuance of that portion would be prejudicial to the offender's health.

(Signed) HUGH C. E. CHILDERS.

30th July, 1881.

The foregoing rules are to be observed by the Royal Marine Forces when subject to the Army Act, 1881, until further rules are made in pursuance of section 44 of the said Act.

(Signed)

ADMIRALTY,

26th November, 1881.

NORTHBROOK.

A. COOPER-KEY.

## XV.

AN ACT OF THE CONGRESS OF THE "CONFEDERATE STATES OF AMERICA," entitled "AN ACT TO ORGANIZE MILITARY COURTS TO ATTEND THE ARMY OF THE CONFEDERATE STATES IN THE FIELD AND TO DEFINE THE POWERS OF SAID COURTS.\*

*The Congress of the Confederate States of America do enact, That* courts shall be organized, to be known as military courts,† one to attend each army corps in the field, under the direction of the President. Each court shall consist of three members, two of whom shall constitute a quorum, and each member shall be entitled to the rank and pay of a colonel of cavalry, shall be appointed by the President, by and with the advice and consent of the Senate, and shall hold his office during the war, unless the court shall be sooner abolished by Congress. For each court there shall be one judge advocate, to be appointed by the President, by and with the advice and consent of the Senate, with the rank and pay of a captain of cavalry, whose duties shall be as prescribed by the Rules and Articles of war, except as enlarged or modified by the purposes and provisions of this act, and who shall also hold his office during the war, unless the court shall be sooner abolished by the Congress; and in case of the absence or disability of the judge advocate, upon the application of the court, the commander of the army corps to which such court is attached may appoint or detail an officer to perform the duties of judge advocate during such absence or disability, or until the vacancy, if any, shall be filled by the President.

SEC. 2. Each court shall have the right to appoint a provost marshal to attend its sittings and execute the orders of the court, with the rank and pay of a captain of cavalry; and also a clerk, who shall have a salary of one hundred and twenty-five dollars per month, who shall keep the record of the proceedings of the court, and shall reduce to writing the substance of the evidence in each case, and file the same in the court. The provost marshal and the clerk shall hold their offices during the pleasure of the court. Each member and officer of the court shall take an oath well and truly to discharge the duties of his office to the best of his skill and ability, without fear, favor, or reward, and to support the Constitution of the Confederate States. Each member of the court, the judge advocate, and the clerk shall have the power to administer this.

SEC. 3. Each court shall have power to adopt rules for conducting business and for the trial of causes, and to enforce the rules adopted, and to punish for contempt, and to regulate the taking of evidence, and to secure the attendance of witnesses, and to enforce and execute its orders, sentences, and judgments, as in cases of courts-martial.

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\* For the copies of this Act and of the other Acts of the Confederate Congress contained in this Appendix, the Author is indebted to Lieutenant Colonel R. N. Scott, Third Artillery, in charge of the Publication Office of War Records.

† Note the constitution, &c., of these more permanent courts in connection with Chapter V, Vol. I, p. 53—"Nature of the court-martial: a temporary tribunal," &c.



SEC. 4. The jurisdiction of each court shall extend to all offences now cognizable by courts-martial under the Rules and Articles of war and the customs of war, and also to all offences defined as crimes by the laws of the Confederate States or of the several States, and, when beyond the territory of the Confederate States, to all cases of murder, manslaughter, arson, rape, robbery, and larceny, as defined by the common law, when committed by any private or officer in the army of the Confederate States against any other private or officer in the army, or against the property or person of any citizen or other person within the army: *provided*, said courts shall not have jurisdiction of offenders above the grade of colonel. For offences cognizable by courts-martial, the court shall, on conviction, inflict the penalty prescribed by the Rules and Articles of war, and in the manner and mode therein mentioned; and for offences not punishable by the Rules and Articles of war, but punishable by the laws of the Confederate States, said court shall inflict the penalties prescribed by the laws of the Confederate States; and for offences against which penalties are not prescribed by the Rules and Articles of war, nor by the laws of the Confederate States, but for which penalties are prescribed by the laws of a State, said court shall inflict the punishment prescribed by the laws of the State in which the offence was committed: *provided*, that in cases in which, by the laws of the Confederate States or of the State, the punishment is by fine or by imprisonment, or by both, the court may, in its discretion, inflict any other punishment less than death; and for the offences defined as murder, manslaughter, arson, rape, robbery, and larceny by the common law, when committed beyond the territorial limits of the Confederate States, the punishment shall be in the discretion of the court. That when an officer under the grade of brigadier-general, or private, shall be put under arrest for any offence cognizable by the court herein provided for, notice of his arrest and of the offence with which he shall be charged shall be given to the judge advocate by the officer ordering said arrest, and he shall be entitled to as speedy a trial as the business before said court will allow.

SEC. 5. Said courts shall attend the army, shall have appropriate quarters within the lines of the army, shall be always open for the transaction of business, and the final decisions and sentences of said courts in convictions shall be subject to review, mitigation, and suspension, as now provided by the Rules and Articles of war in cases of courts-martial.

SEC. 6. That during the recess of the Senate the President may appoint the members of the courts and the judges advocate provided for in the previous sections, subject to the confirmation of the Senate at its session next ensuing said appointments. [Approved October 9, 1862.]

The above legislation was added to and amended by subsequent Acts, of which the principal were the following:—

*Act of May 1, 1863*, authorizing such "military courts" for the military departments.

*Act of Feb. 3, 1864*, authorizing the President to transfer judges from one such military court to another.

*Act of Feb. 6, 1864*, authorizing commanders of corps and departments to detail field officers as members of military courts whenever any

of the judges thereof should be "disqualified by consanguinity or affinity, or unable from sickness or other unavoidable cause, to attend said courts." \*

*Act of Feb. 13, 1864*, establishing a military court in "North Alabama," for a limited period.

*Act of Feb. 16, 1864*, authorizing the President in his discretion "to appoint a military court to attend any division of cavalry in the field, and also one for each State within a military department."

*Act of Feb. 17, 1864*, providing that when two or more army corps, each having a military court, are united in the same army, the jurisdiction of each court shall extend to the whole army; providing for the exchanging and transferring of judges of different courts; and subjecting to the jurisdiction of such courts "all offenders below the grade of lieut.-general."

*Act of Feb. 17, 1864*, empowering military courts (and courts-martial) to summon citizens as witnesses, and providing that a citizen disobeying a summons of such court should be subjected to the same penalties as a witness disobeying an order of the District Court of the Confederate States, or arrested by military force and brought before the military court, to be held in close confinement till he should consent to testify.†

*Act of June 14, 1864*, repealing the provision of the original Act allowing the "military courts" to appoint their clerks and marshals, and making it the duty of the Secretary of War to detail persons to act as such from the officers, non-commissioned officers and privates of the army unable to perform field duty.

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\* Note this provision in connection with Chapter XIV, Vol. I, pp. 309-310—"Relationship."

† Note this provision in connection with Chapter XVII, Vol. I, p. 437 and note—"Contempts."

## XVI.

## AN ACT OF THE CONGRESS OF THE "CONFEDERATE STATES OF AMERICA," entitled "AN ACT TO SUSPEND THE PRIVILEGE OF THE WRIT OF HABEAS CORPUS IN CERTAIN CASES."\*

Whereas the Constitution of the Confederate States of America provides, in article first, section nine, paragraph three, that "the privilege of the writ of habeas corpus shall not be suspended, unless when, in case of rebellion or invasion, the public safety may require it:" and whereas the power of suspending the privilege of said writ, as recognized in said article first, is vested solely in the Congress, which is the exclusive judge of the necessity of such suspension: and whereas in the opinion of the Congress, the public safety requires the suspension of said writ in the existing case of the invasion of these States by the armies of the United States: and whereas the President has asked for the suspension of the writ of habeas corpus, and informed Congress of conditions of public danger which render the suspension of the writ a measure proper for the public defence against invasion and insurrection: Now, therefore,

*The Congress of the Confederate States of America do enact*, That during the present invasion of the Confederate States, the privilege of the writ of habeas corpus be and the same is hereby suspended; but such suspension shall apply only to the cases of persons arrested or detained by order of the President, Secretary of War, or the general officer commanding the Trans-Mississippi Military Department, by the authority and under the control of the President. It is hereby declared that the purpose of Congress in the passage of this act is to provide more effectually for the public safety, by suspending the writ of habeas corpus in the following cases, and no others:

First—Of treason, or treasonable efforts or combinations to subvert the government of the Confederate States.

Second—Of conspiracies to overthrow the government, or conspiracies to resist the lawful authorities of the Confederate States.

Third—Of combining to assist the enemy, or of communicating intelligence to the enemy, or giving him aid and comfort.

Fourth—Of conspiracies, preparations and attempts to incite servile insurrection.

Fifth—Of desertions or encouraging desertions, of harboring deserters and of attempts to avoid military service; provided, that in cases of palpable wrong and oppression by any subordinate officer, upon any party who does not legally owe military service, his superior officer shall grant prompt relief to the oppressed party, and the subordinate shall be dismissed from office.

Sixth—Of spies and other emissaries of the enemy.

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\* Published, with directions as to its execution, in G. O. 31, A. & I. G. O., Richmond, 1864.

Seventh—Of holding correspondence or intercourse with the enemy, without necessity, and without the permission of the Confederate States.

Eighth—Of unlawful trading with the enemy, and other offences against the laws of the Confederate States, enacted to promote their success in the war.

Ninth—Of conspiracies, or attempts to liberate prisoners of war held by the Confederate States.

Tenth—Of conspiracies, or attempts or preparations to aid the enemy.

Eleventh—Of persons advising or inciting others to abandon the Confederate cause, or to resist the Confederate States, or to adhere to the enemy.

Twelfth—Of unlawfully burning, destroying or injuring, or attempting to burn, destroy or injure any bridge or railroad or telegraphic line of communication, or other property, with the intent of aiding the enemy.

Thirteenth—Of treasonable designs to impair the military power of the government, by destroying, or attempting to destroy the vessels or arms, or munitions of war, or arsenals, foundries, workshops or other property of the Confederate States.

SEC. 2. The President shall cause proper officers to investigate the cases of all persons so arrested or detained, in order that they may be discharged, if improperly detained, unless they can be speedily tried in the due course of law.

SEC. 3. That during the suspension aforesaid no military or other officer shall be compelled, in answer to any writ of habeas corpus, to appear in person or to return the body of any person or persons detained by him by the authority of the President, Secretary of War, or the general officer commanding the Trans-Mississippi department; but upon the certificate under oath of the officer having charge of any one so detained, that such person is detained by him as a prisoner for any of the causes hereinbefore specified, under the authority aforesaid, further proceedings under the writ of habeas corpus shall immediately cease, and remain suspended so long as this act shall continue in force.

SEC. 4. This act shall continue in force for ninety days after the next meeting of Congress, and no longer.

Approved February 15, 1864.

## XVII.

### FORMS OF CHARGES.

#### UNDER ARTICLE 3.

**Charge.** Unauthorized enlistment, in violation of the Third Article of War.

**Specification.** In that A. B., Captain, &c., did enlist into the military service, without the written consent thereto of his parents, one C. D., known to him to be a minor under the age of twenty-one years;

*Or*—did enlist into the military service one C. D., known to him to be a minor under the age of sixteen years;

*Or*—known to him to be an insane person;

*Or*—known to him to be at the time intoxicated;

*Or*—known to him to be a deserter from the said service;

*Or*—known to him to have been convicted of an infamous criminal offence.

This at (*or*—at or near) ....., on or about .....

#### UNDER ARTICLE 5.

**Charge.** False muster, in violation of the Fifth Article of War.

**Specification.** In that A. B., Captain, &c., at an official muster of, (*describe the command,*) did unlawfully include and muster as a soldier thereof one C. D., known to him to be not a soldier but a civilian.

This at ....., on or about .....

#### UNDER ARTICLE 6.

**Charge.** Violation of the Sixth Article of War.

**Specification.** In that A. B., Colonel, &c., being mustering officer for the ..... regiment, ..... did, on mustering the same, and in consideration of appending favorable remarks as to the condition of the same, accept and take by way of gratification, from ..... the sum of .....dollars.

*Or*—In that A. B., Captain, &c., on signing the muster-rolls of his company, and, in consideration of his certifying to the same as correct and true, did accept and take by way of gratification from ..... the sum of ..... dollars.

This at ....., on or about .....

## UNDER ARTICLE 7.

**Charge.** Omitting to make a monthly return, in violation of the Seventh Article of War.

**Specification.** In that A. B., Colonel, &c., commanding the..... regiment ....., did designedly, (or *through neglect*,) omit to transmit through the proper channels to the War Department at the beginning of the month of ....., an exact official return of his said regiment, specifying the names of the officers then absent from said regiment and from their posts, with the reasons for and the time of their absences, as required by the said Seventh Article.

This at ....., on or about .....

## UNDER ARTICLE 8.

**Charge.** Making a false return, in violation of the Eighth Article of War.

**Specification.** In that A. B., Captain, &c., commanding (*specify the command*,) did make to a superior officer authorized to call for such returns, to wit to ....., an official return of the arms belonging to his said command, in which he, the said A. B., &c., did state, (*give statement as to number, kind, or condition of arms, &c.*;)—which said statement was false, and known to him the said A. B., &c., to be false.

This at ....., on or about .....

## UNDER ARTICLE 13.

**Charge.** Signing a false certificate, in violation of the Thirteenth Article of War.

**Specification.** In that A. B., Captain, &c., did sign a certificate appended to the muster-and-pay roll of his company for the months of ..... and ....., to the effect that the said roll exhibited a true statement of his said company; whereas it appeared from said roll that Privates ..... and ..... were present for duty with said company when in fact they were absent from the same; the said certificate being thus in part false.

This at ....., on or about .....

## UNDER ARTICLE 14.

**Charge.** False muster, in violation of the Fourteenth Article.

**Specification.** In that A. B., Captain, &c., did sign an official muster roll of his company for the month of ....., which contained and included the name of one C. D., as being a member of said company; he the said A. B., Captain, &c., well knowing that said C. D. was not a soldier, nor a member of his company, but was a civilian, and that his muster was therefore false.

This at ....., on or about .....

## UNDER ARTICLE 15.

**Charge.** Suffering military stores to be damaged, in violation of the Fifteenth Article of War.

**Specification.** In that A. B., Captain, &c., commanding, &c., did suffer certain military stores belonging to the United States, and in his charge as such commander, to wit ....., to be seriously damaged, by negligently allowing the same to be exposed to the elements, (or unguarded, &c.,) to the loss to the United States of about ..... dollars.

This at ....., on or about .....

## UNDER ARTICLE 16.

**Charge.** Wasting ammunition, in violation of the Sixteenth Article of War.

**Specification.** In that A. B., Private, &c., having had certain ammunition, to wit ..... rounds of cartridges duly issued to him by ....., for use in the military service, did negligently waste the same by firing away the said cartridges without orders or sufficient cause; the same being ammunition for which ..... is accountable.

This at ....., on or about .....

## UNDER ARTICLE 17.

**Charge.** Selling clothing, in violation of the Seventeenth Article of War.

**Specification.** In that A. B., Private, &c., did sell to one ....., (or to a person whose name is unknown,) certain of his clothing, to wit one overcoat of the value of ....., issued to him for use in the military service, and for which ..... is accountable.

This at ....., or or about .....

## UNDER ARTICLE 18.

**Charge.** Being interested in sales, in violation of the Eighteenth Article of War.

**Specification.** In that A. B., Captain, &c., commanding the garrison of ....., did, for his private advantage, become pecuniarily interested, to the extent of one third of the profits, with one C. D., in the sales of liquors allowed to be brought by the said C. D. into said garrison, for the use of the soldiers.

This at ....., on or about .....

## UNDER ARTICLE 19.

**Charge.** Disrespect to the President of the United States, in violation of the Nineteenth Article of War.

**Specification.** In that A. B., Captain, &c., did, publicly, in the presence of civilians and soldiers, use contemptuous and disrespectful words of and against ....., the President of the United States, by saying—(*give language in full or in substance.*)

This at ....., on or about .....

## UNDER ARTICLE 20.

**Charge.** Disrespect toward his commanding officer, in violation of the Twentieth Article of War.

**Specification.** In that A. B., Captain, &c., did behave with disrespect toward his commanding officer, Colonel C. D., &c., by saying to him—(*give language used.*)

Or—by saying of or in regard to him—(*give language or substance.*)

Or, by—(*state acts or conduct manifesting disrespect.*)

This at ....., on or about .....

## UNDER ARTICLE 21.

**Charge.** Offering violence against his superior officer, in violation of the Twenty-first Article of War.

**Specification.** In that A. B., Private, &c., did offer violence against his superior officer, Captain C. D., &c., then being in the execution of his office, by threatening and attempting to strike him with his musket.

This at ....., on or about .....

**Charge.** Disobedience of Orders, in violation of the Twenty-first Article of War.

**Specification.** In that A. B., Captain, &c., having received from his superior and commanding officer, C. D., Colonel, &c., a specific lawful command and order requiring him to—(*state what the order required;*) or—a lawful command and order in writing, expressed as follows, namely—(*give the written order in full;*)

did nevertheless deliberately refuse (or wholly neglect) to obey said order, but did—(*adding, if expedient, circumstances characterizing the disobedience.*)

This at ....., on or about .....



UNDER ARTICLE 22.

**Charge.** Beginning a mutiny, in violation of the Twenty-second Article of War.

**Specification.** In that A. B., a Sergeant of Company ....., did begin a mutiny in said Company by inducing and causing the members of said Company to stack arms, and to refuse to Captain C. D., the commanding officer of the Company, to do any further duty until one E. F., a member of the Company, then confined in the guard house, should be released by the said Captain.

This at ....., on or about .....

**Charge.** Joining in a mutiny, in violation of the Twenty-second Article of War.

**Specification.** In that A. B., a Private of the ..... Regiment of ....., upon a mutiny having been begun and excited in said regiment against the authority of the post commander, Colonel C. D., ..... did join in the said mutiny, and, in combination with other members of said regiment, did refuse to do any further duty, and did forcibly resist the officers of said regiment who attempted to arrest him and them, making it necessary to call in the assistance of a detachment of another command, to wit the ..... Regiment of ....., before he and they could be restrained and confined.

This at ....., on or about .....

**Charge.** Joining in a sedition, in violation of the Twenty-second Article of War.

**Specification.** In that A. B., a Private of the ..... Regiment of ....., upon a member of said regiment having been arrested for drunken and disorderly conduct and confined in the town jail by the civil authorities of the town of ....., did join with other members of the regiment and sundry citizens in an attempt to break into the jail and release said prisoner, and did assault and beat the police officers and others of the said civil authorities, and other disorders did then and there commit, till restrained by means of a detachment of ....., sent from the post of ....., and compelled to return to their quarters.

This at ....., on or about .....

UNDER ARTICLE 23.

**Charge.** Failing properly to endeavor to suppress a mutiny, in violation of the Twenty-third Article of War.

**Specification.** In that A. B., Captain, &c., being present at a mutiny among the soldiers of his company and of the regiment, against the authority of the regimental commander, did fail to use his utmost endeavor to suppress the same, but did simply command the men of his own company to return to their quarters, and, on their refusing, took no means to compel their obedience or reduce them to discipline.

This at ....., on or about .....

**Charge.** Failing to give information of an intended mutiny, in violation of the Twenty-third Article of War.

**Specification.** In that A. B., a Sergeant of Company ..., ..... Regiment, U. S. ...., having knowledge that certain members of his company and of said regiment proposed and intended to begin and join in a mutiny, on the following day, against the authority of the regimental commander, did wholly fail and neglect to inform the said commander, or his company commander, of said intended mutiny, so that the same was actually begun without the said officers being enabled to take measures to prevent it.

This at ....., on or about .....

#### UNDER ARTICLE 24.

**Charge.** Violation of the Twenty-fourth Article of War.

**Specification.** In that A. B., a Sergeant of Company ..., ..... Regiment ....., being engaged in a fray with other members of said company and regiment, and being ordered into confinement by Captain C. D., of the ..... Regiment ....., did refuse to obey such officer, and did draw a weapon, to wit a pistol, upon him.

This at ....., on or about .....

#### UNDER ARTICLE 26.

**Charge.** Sending a challenge, in violation of the Twenty-sixth Article of War.

**Specification.** In that A. B., Captain, &c., did invite C. D., Captain, &c., to a mortal combat with deadly weapons, by sending to him, by the hands of ....., (*or if otherwise sent, state manner of sending,*) a written challenge, in the words and figures following, to wit: (*Give written challenge in full: if the challenge was verbal, give words or substance.*)

This at ....., on or about .....

**Charge.** Accepting a challenge, in violation of the Twenty-sixth Article of War.

**Specification.** In that A. B., Captain, &c., having received from Captain C. D., &c., a challenge to fight with him a duel, did accept said challenge by sending to the said Captain C. D., by the hands of ....., (*or if otherwise sent, state manner of sending,*) a written acceptance of the same in terms as follows, to wit: (*Give written acceptance in full: if the acceptance was verbal, give words or substance.*)

This at ....., on or about .....

#### UNDER ARTICLE 27.

**Charge.** Violation of the Twenty-seventh Article of War.

**Specification.** In that A. B., Second Lieutenant, &c., being officer of the guard of the Post of ....., and being informed that Captain

C. D., &c., intended and was about to engage in a duel outside said post, did knowingly and willingly suffer said Captain C. D. to go forth from said post and fight such duel.

This at ....., on or about .....

**Charge.** Seconding and promoting a duel in violation of the Twenty-seventh Article of War.

**Specification.** In that Captain A. B., &c.,—on the occasion of the challenging by First Lieutenant C. D., &c., of First Lieutenant E. F., &c., to fight with him a duel, and the acceptance of such challenge by the latter, and further at the duel thereupon fought between said officers,—did act as second of said Lieutenant C. D., and as such did carry said challenge and receive said acceptance, and was present at said duel, seconding and promoting the same.

This at ....., on or about .....

**Charge.** Carrying a challenge, in violation of the Twenty-seventh Article of War.

**Specification.** In that A. B., Second Lieutenant, &c., did carry a communication in writing from Captain C. D., &c., to Captain E. F., &c., well knowing that the same was a challenge from said Captain C. D. to said Captain E. F., to fight with him a duel.

This at ....., on or about .....

#### UNDER ARTICLE 28.

**Charge.** Upbraiding another officer for refusing a challenge, in violation of the Twenty-eighth Article of War.

**Specification.** In that A. B., Captain, &c.,—upon First Lieutenant C. D., &c., having declined a challenge sent him by First Lieutenant E. F., &c., and refused to fight with him a duel,—did upbraid said First Lieutenant C. D., by pronouncing him to be a coward.

This at ....., on or about .....

#### UNDER ARTICLE 31.

**Charge.** Lying out of quarters, in violation of the Thirty-first Article of War.

**Specification.** In that A. B., Private, &c., did, without leave from his proper superior officer, lie out of his quarters at the post of ....., by remaining during the night at .....

This at ....., on or about .....

#### UNDER ARTICLE 32.

**Charge.** Absence without leave, in violation of the Thirty-second Article of War.

**Specification.** In that A. B., Private, &c., did, without leave from his commanding officer, absent himself from his company, from .....

..... to ..... . (*Give hours and days; or say 'on' a certain day or 'during' a certain period.*)

*Or*—In that A. B., Private, &c., having received a pass authorizing him to be absent from his company till ....., did, at the end of said time, neglect duly to return but did remain absent without leave from his commanding officer till .....

This at ....., on or about .....

#### UNDER ARTICLE 33.

**Charge.** Failing duly to repair to parade, in violation of the Thirty-third Article of War.

*Specification.* In that A. B., Captain, &c., though not prevented by sickness or other necessity, did fail to repair to the place of parade of said regiment at the time duly fixed for the parade thereof.

This at ....., on or about .....

**Charge.** Leaving parade, in violation of the Thirty-third Article of War.

*Specification.* In that A. B., Captain, &c., having duly attended the parade of his regiment, did, without leave from his commanding officer, Colonel ....., commanding said regiment, quit and go from said parade without being dismissed or relieved therefrom.

This at ....., on or about .....

#### UNDER ARTICLE 34.

**Charge.** Violation of the Thirty-fourth Article of War.

*Specification.* In that A. B., Private, &c., was found one mile from the camp of his company, to wit at ....., without having leave in writing from his commanding officer.

This at ....., on or about .....

#### UNDER ARTICLE 35.

**Charge.** Violation of the Thirty-fifth Article of War.

*Specification.* In that A. B., Private, &c., did fail at the beating, (*or sounding,*) of retreat, to retire to his quarters.

This at ....., on or about .....

#### UNDER ARTICLE 36.

**Charge.** Violation of the Thirty-sixth Article of War.

*Specification.* In that A. B., Private, &c., having been duly detailed upon the duty of ....., did, for the consideration of ....., hire C. D., Private, &c., to perform said duty for him.

*Or*—In that A. B., Private, &c., did allow himself, for the consideration of ....., to be hired by C. D., Private, &c., to perform for him the duty of ....., upon which he, the said C. D., had been duly detailed.

This at ....., on or about .....

## UNDER ARTICLE 37.

**Charge.** Allowing the hiring of duty, in violation of the Thirty-seventh Article of War.

**Specification.** In that A. B., Captain, &c., having knowledge of the hiring by Private C. D. of Private E. F., of said company, to perform for him, the said C. D., the duty of ....., upon which he, the said C. D., had been duly detailed, did not prevent or forbid such hiring, but did sanction and allow the same.

This at ....., on or about .....

## UNDER ARTICLE 38.

**Charge.** Drunkenness on duty, in violation of the Thirty-eighth Article of War.

**Specification.** In that A. B., Captain, &c., having been duly detailed as officer of the day of the Post of ....., and having entered upon said duty, was found drunk thereon.

This at ....., on or about .....

**Or**—In that A. B., Private, &c., having been duly detailed as a member of the Post guard, and having entered upon said duty, was found drunk thereon.

This at ....., on or about .....

## UNDER ARTICLE 39.

**Charge.** Sleeping on post, in violation of the Thirty-ninth Article of War.

**Specification.** In that A. B., Private, &c., having been duly detailed as a member of the Post guard, and duly posted as a sentinel at (*give number or description of post,*) was found by ....., asleep on his said post.

This at ....., on or about .....

**Charge.** Leaving post, in violation of the Thirty-ninth Article of War.

**Specification.** In that A. B., Private, &c., having been duly detailed as a member of the Post guard, and duly posted as a sentinel at (*give number or description of post,*) did, before being regularly relieved, leave said post and go to ..... (*state where he went or what he did.*)

This at ....., on or about .....

## UNDER ARTICLE 40.

**Charge.** Violation of the Fortieth Article of War.

**Specification.** In that A. B., Private, &c., being duly detailed and acting as one of a guard of prisoners, did, without leave from his proper superior officer and without urgent necessity, quit his said guard.

This at ....., on or about .....

## UNDER ARTICLE 41.

**Charge.** Causing a false alarm in violation of the Forty-first Article of War.

**Specification.** In that A. B., Captain, &c., did, by needlessly and without authority causing the long roll to be sounded, create a false alarm in the camp of his regiment.

This at ....., on or about .....

## UNDER ARTICLE 42.

**Charge.** Misbehaviour before the enemy, in violation of the Forty-second Article of War.

**Specification.** In that Brigadier General A. B., commanding 1st Brigade, ....., having been ordered with his command to engage the enemy, and while his command was under fire, did abandon the same, and seek safety at the rear, and did not reappear till the engagement was concluded.

This at ....., on or about .....

**Charge.** Abandoning a post, in violation of the Forty-second Article of War.

**Specification.** In that Colonel A. B., &c., having been, by his proper superior, Brig. Gen. ...., duly placed in command of the Post of ....., and ordered to defend the same, did, in disregard of his orders and his duty, shamefully abandon his said post to the enemy.

This at ....., on or about .....

**Charge.** Quitting his post to plunder and pillage, in violation of the Forty-second Article of War.

**Specification.** In that A. B., Private, &c., being on duty with his regiment in the field, did quit his post and colors for the purpose of plunder and pillage, and did commit plunder and pillage of the property of one C. D., a citizen, by forcibly entering the house of said C. D., against his will, and taking therefrom and appropriating money and effects of the said C. D., of the value of ..... dollars.

This at ....., on or about .....

## UNDER ARTICLE 43.

**Charge.** Compelling a surrender, in violation of the Forty-third Article of War.

**Specification.** In that A. B., Captain, &c., being an officer under the command of Colonel C. D., commanding the post of ....., then threatened by the enemy, did, in combination with other officers and soldiers of said command, compel said Colonel C. D. to surrender said post to the enemy.

This at ....., on or about .....

UNDER ARTICLE 44.

**Charge.** Violation of the Forty-fourth Article of War.

**Specification.** In that A. B., Captain, &c., did make known the watchword to one C. D., a civilian; he the said C. D. not being a person entitled to receive the same, according to the rules and discipline of war.

*Or*—did presume to give to ..... a watchword different from that which he had received.

This at ....., on or about .....

UNDER ARTICLE 45.

**Charge.** Relieving the enemy, in violation of the Forty-fifth Article of War.

**Specification.** In that A. B. (*describing him*.) did relieve the enemy by furnishing to certain soldiers of his army, whose names are unknown, ammunition, to wit about one hundred pounds of powder.

This at ....., on or about .....

UNDER ARTICLE 46.

**Charge.** Corresponding with the enemy, in violation of the Forty-sixth Article of War.

**Specification.** In that A. B. ...., did directly hold correspondence with and give intelligence to the enemy, by writing and transmitting secretly through the lines to one C. D., an officer of the enemy's army, a communication in words and figures following, to wit:—  
(*Insert communication containing material information.*)

This at ....., on or about .....

UNDER ARTICLE 47.

**Charge.** Desertion, in violation of the Forty-seventh Article of War.

**Specification.** In that A. B., Private, &c., having been duly enlisted in the military service of the United States, did desert the same, and did remain absent as a deserter therefrom till arrested at ....., by ....., on .....

*Or*—having been duly enlisted, &c., and having received a furlough authorizing him to be absent from said service till ....., did not at said date return to said service, but did continue to remain absent with the intent to abandon the same, and did actually remain absent as a deserter therefrom till arrested at ....., by ....., on .....

This at ....., on or about .....

## UNDER ARTICLE 49.

**Charge.** Desertion, in violation of the Forty-ninth Article of War.

**Specification.** In that A. B., Captain, &c., having duly tendered his resignation as such Captain, did, before having received due notice of the acceptance of the same, quit his post and proper duties, without leave from the proper authority, and with intent to remain permanently absent therefrom.

This at ....., on or about .....

## UNDER ARTICLE 50.

**Charge.** Desertion, in violation of the Fiftieth Article of War.

**Specification.** In that A. B., Private, Company A, First Regiment U. S. Infantry, did, without having been regularly discharged from said company and regiment, enlist himself in the Second Regiment U. S. Cavalry.

This at ....., on or about .....

**Charge.** Receiving, &c., a deserter, in violation of the Fiftieth Article of War.

**Specification.** In that A. B., Captain, First Regiment U. S. Infantry,—upon one C. D., a Private of the Second Regiment U. S. Cavalry, offering himself to him, the said A. B., for enlistment in said First Infantry, without having been regularly discharged from said second regiment of Cavalry,—did, though knowing that he had not been so discharged but was a deserter from said regiment, neglect to confine him or give notice of his offence to the officers of said regiment, but did receive him and suffer him to be enlisted in said first regiment of Infantry.

This at ....., on or about .....

## UNDER ARTICLE 51.

**Charge.** Persuading to desert, in violation of the Fifty-first Article of War.

**Specification.** In that A. B., Corporal, Company A, First Regiment U. S. Infantry, did advise and persuade C. D., a private of said company and regiment, to desert the U. S. service; he the said C. D. thereupon deserting said service in company with the said A. B.

This at ....., on or about .....

## UNDER ARTICLE 54.

**Charge.** Violation of the Fifty-fourth Article of War.

**Specification.** In that A. B., Captain, &c., commanding a detachment on the march,—upon complaint being made to him that Private C. D. of his command had ill-treated a citizen,—did neglect to see justice done to the offender and reparation made to the party injured out of a part of the offender's pay.

This at ....., on or about .....



UNDER ARTICLE 55.

**Charge.** Violation of the Fifty-fifth Article of War.

**Specification.** In this that A. B., Private, &c., (not being ordered to do so by a general officer commanding a separate army in the field,) did maliciously destroy, by burning, a stack of hay, the property of one C. D., an inhabitant of the United States.

This at ....., on or about .....

UNDER ARTICLE 56.

**Charge.** Violation of the Fifty-sixth Article of War.

**Specification.** In that A. B., Private, &c.,—upon C. D., an inhabitant of the country, bringing provisions into the camp of the U. S. forces at .....,—did do violence to said C. D., by assaulting and beating him and seizing upon the said provisions.

This at (a place "*in foreign parts*," ) on or about .....

UNDER ARTICLE 57.

**Charge.** Forcing a safeguard in violation of the Fifty-seventh Article of War.

**Specification.** In that A. B., Private, &c., did, with other soldiers of his regiment, force a safeguard placed over the house and premises of one C. D., an inhabitant of the country, and did violently enter said premises and commit waste and plunder therein.

This at (a place "*in foreign parts*," ) on or about .....

UNDER ARTICLE 58.

**Charge.** Murder, in violation of the Fifty-eighth Article of War.

**Specification.** In that A. B., Private, &c., did, feloniously and with malice aforethought, kill C. D., Private, &c., by shooting him with his rifle.

This, in time of war, at ....., on or about .....

**Charge.** Manslaughter, in violation of the Fifty-eighth Article of War.

**Specification.** In that A. B., Private, &c., did unlawfully and feloniously kill one C. D., a civilian, by shooting him with a pistol.

This, in time of war, at ....., on or about .....

**Charge.** Mayhem, in violation of the Fifty-eighth Article of War.

**Specification.** In that A. B., Private, &c., in a personal combat with C. D., Private, &c., did, unlawfully and feloniously, inflict a violent injury upon and wholly blind one of his eyes, thereby depriving him, the said C. D., of the use of that member in battle, and disabling him for active service as a soldier.

This, in time of war, at ....., on or about .....

**Charge.** Robbery, in violation of the Fifty-eighth Article of War.

**Specification.** In that A. B., Private, &c., did unlawfully and feloniously make an assault upon one C. D., a civilian, and, by means of violence, take from his person property belonging to him, to wit fifty dollars in gold.

This, in time of war, at ....., on or about .....

**Charge.** Arson, in violation of the Fifty-eighth Article of War.

**Specification.** In that A. B., Private, &c., did unlawfully and feloniously set fire to and burn the dwelling house of one C. D., a civilian.

This, in time of war, at ....., on or about .....

**Charge.** Burglary, in violation of the Fifty-eighth Article of War.

**Specification.** In that A. B., Private, &c., did unlawfully and feloniously break into and enter, in the night time, the dwelling house of one C. D., a civilian, with intent to commit larceny therein.

This, in time of war, at ....., on or about .....

**Charge.** Larceny, in violation of the Fifty-eighth Article of War.

**Specification.** In that A. B., Private, &c., did unlawfully and feloniously take and carry away a gold watch, of the value of one hundred dollars, the property of one C. D., a civilian, against the will and consent of him, the said C. D., and with the intent of appropriating the same to his, the said A. B.'s, own use.

This, in time of war, at ..... , on or about .....

**Charge.** Rape, in violation of the Fifty-eighth Article of War.

**Specification.** In that A. B., Private, &c., did unlawfully and feloniously have carnal knowledge of and ravish one C. D., by means of force and against her will and consent.

This, in time of war, at ....., on or about .....

**Charge.** Assault and battery, in violation of the Fifty-eighth Article of War.

**Specification.** In that A. B., Private, &c., did unlawfully and feloniously assault and beat one C. D., a civilian, by knocking him down with his musket.

This, in time of war, at ....., on or about .....

#### UNDER ARTICLE 59.

**Charge.** Violation of the Fifty-ninth Article of War.

**Specification.** In that A. B., Captain, &c., commanding the Post of .....;—when Private C. D., &c., a soldier under his command, was duly accused of having committed a criminal offence, to wit robbery, against the person of one E. F., a citizen of the State of ..... , and an application for the apprehension, and delivery to the civil au-

thorities, of the said C. D., had been duly made by the Sheriff of the County of ..... in behalf of said E. F., to him the said A. B., commanding as aforesaid;—he the said A. B. did refuse to deliver over the said C. D. to the civil authorities, or to aid them in apprehending him.

This, in time of peace, at ....., on or about .....

#### UNDER ARTICLE 60.

**Charge.** Presenting a fraudulent claim, in violation of the Sixtieth Article of War.

**Specification.** In that A. B., Captain, &c., having duly received from Major ....., Paymaster U. S. Army, at Washington, D. C., his monthly pay for the month of January, 1886, did, notwithstanding, subsequently make and present to Major ....., Paymaster U. S. Army, a second pay account and claim for pay for the same month, well knowing that said claim was false and fraudulent.

This at the City of New York, on or about .....

**Charge.** Making and using a false writing, in violation of the Sixtieth Article of War.

**Specification.** In that A. B., Captain, &c., for the purpose of aiding one C. D., a civil employee of the United States, to obtain the approval and allowance of a claim against the United States, for services rendered as such employee, did make and furnish to said C. D. a writing, in which he certified and stated that said claim was correct and just; he the said A. B., Captain, &c., well knowing that the said claim was fraudulent in that said services had not been rendered as alleged therein, and that said certificate and statement were therefore false.

This at ....., on or about .....

**Charge.** Forgery, in violation of the Sixtieth Article of War.

**Specification.** In that A. B., Private, &c., for the purpose of obtaining the approval, and payment to him, of a claim against the United States for certain pay and allowances set forth in a certain "final statement" prepared by him, did forge and counterfeit thereon the name and signature of Captain C. D., &c., his company commander, as certifying to the correctness of the same.

This at ....., on or about .....

**Charge.** False payment, in violation of the Sixtieth Article of War.

**Specification.** In that A. B., Captain, &c., being a disbursing officer of the United States, and as such in possession of public funds of the United States, furnished and intended for the military service thereof; upon the presentation to him as such disbursing officer, by one C. D., a contractor with the United States, of a claim for ..... dollars, as the amount due for certain supplies furnished by said contractor; and upon the signing, and rendering to the said A. B., by him the said

C. D., of a receipt for the said amount, did knowingly deliver to said C. D., in payment of said claim, an amount of said funds less than that for which he had received such receipt, to wit the amount of ..... dollars.

This at ....., on or about .....

**Charge.** Making and delivering an untrue receipt, in violation of the Sixtieth Article of War.

**Specification.** In that Captain A. B., &c., a disbursing officer of the United States, and as such authorized to make, and deliver to one C. D., a contractor with the United States, a paper certifying the receipt by the United States, through him, the said A. B., &c., of certain property, to wit : ..... furnished by the said C. D., and intended for the military service of the United States, did, with intent to defraud the United States, make, sign, and deliver to the said C. D., a certificate containing statements as to the quantity, (or value, &c.,) of said property, without having full knowledge of the truth of said statements, but knowing that the same were in part false.

This at ....., on or about .....

**Charge.** Embezzlement, in violation of the Sixtieth Article of War.

**Specification.** In that A. B., Captain, &c., being a disbursing officer of the United States, and as such having in his possession public funds of the United States, furnished and intended for the military service thereof, and duly entrusted to his charge for disbursement in and for said service, did wrongfully and in violation of said trust, embezzle, and knowingly and wilfully apply to his own use and benefit, by (*specify the manner, purpose, &c., of the personal application.*) a portion of said funds, to wit the sum of ..... dollars.

This at ....., on or about .....

**Charge.** Embezzlement, in violation of the Sixtieth Article of War.

**Specification.** In that A. B., Captain, &c., being a disbursing officer of the United States, and being as such authorized to draw for proper purposes official checks upon ....., a public depository of the United States, in which were deposited public funds furnished and intended for the military service of the United States, did, for a purpose not prescribed or authorized by law, to wit for the payment of a personal debt, withdraw by check a portion of said funds, to wit the sum of ..... dollars: this in violation of Sec. 5488, Revised Statutes.

This at ....., on or about .....

**Charge.** Misappropriation, in violation of the Sixtieth Article of War.

**Specification.** In that A. B., Captain, &c., being a disbursing officer of the United States, and having as such been supplied with certain

funds of the United States, to wit the sum of ..... dollars, furnished for the military service but for the specific purpose of the erection of public quarters for soldiers at the Post of ....., did knowingly and wilfully misappropriate the said funds by applying a portion of the same to the erection of public stables at said Post.

This at ....., on or about .....

**Charge.** Wrongful disposition of public property, in violation of the Sixtieth Article of War.

**Specification.** In that A. B., Captain and Assistant Quartermaster, U. S. Army, having in his charge, as such Assistant Quartermaster, certain public horses furnished for the military service of the United States, did wrongfully and knowingly dispose of one of said horses by loaning the same to C. D., a civilian, and allowing him to keep and use the said horse for his personal uses and purposes.

This at ....., during the month of ....., 1886.

**Charge.** Wrongful disposition of public property, in violation of the Sixtieth Article of War.

**Specification.** In that A. B., Private, &c., did, in deserting from the military service, wrongfully dispose of certain ordnance stores belonging to the United States, and furnished to him for use in the military service, to wit, (*specify articles with their values;*) the same being property for which Captain C. D., &c., was accountable.

This at ....., on or about.....

**Charge.** Purchasing public property in violation of the Sixtieth Article of War.

**Specification.** In that A. B., Private, &c., did knowingly purchase from C. D., Private, &c., property of the United States, to wit, one pistol which had been issued to the said C. D., for his use in the military service; he, the said C. D., having no lawful right to sell the same.

This at ....., on or about.....

#### UNDER ARTICLE 61.

**Charge.** Conduct unbecoming an officer and a gentleman, in violation of the Sixty-first Article of War.

**Specification.** In that A. B., Captain, &c., having conducted an unsuccessful expedition against hostile Indians, which had failed mainly through his negligence, did make and forward to his commanding officer, Colonel C. D., &c., an official report of said expedition in which were contained certain statements as follows, to wit:—

(*Quote the statements so far as material.*)

Which said statements were wholly, or in great part, false; and were made by him the said A. B. for the purpose of deceiving his said commanding officer as to the matter of the responsibility for the failure of the said expedition.

This at ....., on or about .....

**Charge.** Conduct unbecoming an officer and a gentleman.

**Specification.** In that A. B., Captain, &c., having become justly indebted to C. D., a civilian, in the sum of ..... dollars, for articles sold and furnished by said C. D. to him the said A. B., under the offer and assurance of him the said A. B. that the same should be fully paid for at the end of the then month, did nevertheless neglect, without due cause or excuse, to pay for the same at that time, and for more than six months succeeding, when, having been repeatedly applied to by the said C. D. for payment, he the said A. B. did give to said C. D., in payment, his check for said sum on the Bank of ....., he the said A. B. well knowing that he had no funds whatever on deposit in the said Bank.

This at ....., on or about .....

**Charge.** Conduct unbecoming an officer and a gentleman.

**Specification.** In that A. B., Captain, &c., having had a charge preferred against him for drunkenness, by his commanding officer, Colonel C. D., &c., did, in order to induce the withdrawal of said charge, and to escape a trial thereon, make and give to his said commander a written promise and pledge, in terms as follows, to wit:—

(Insert pledge to abstain from spirituous liquors for a certain time stated.)

Whereupon, in consideration of the said promise and pledge, the said Colonel C. D. did not forward for trial the said charge but withdrew the same; but, notwithstanding, he the said A. B., Captain, &c., did soon after, to wit on....., become drunk.

This at ....., on the dates above mentioned.

#### UNDER ARTICLE 62.

**Charge.** Absence without leave, to the prejudice of good order and military discipline.

**Specification.** In that A. B., Captain, &c., did without authority absent himself from his post, command and duties, for one week, to wit from ..... to ....., 1886.

This at ....., on and between the dates mentioned.

**Charge.** Neglect of duty, to the prejudice of good order and military discipline.

**Specification.** In that A. B., Major, &c., commanding a detachment operating against hostile Indians, and being ordered by his commanding officer, Brigadier General ....., U. S. Army, to pursue and attack a certain body of Indians, (*describing them*,) did, by unnecessary delays and want of proper precautions, wholly fail to attack said Indians, but did allow them to attack him and to defeat his command.

This at ....., on or about .....

**Charge.** Conduct to the prejudice of good order and military discipline.

**Specification.** In that A. B., Major, &c., being a disbursing officer of the United States, did, in violation of Paragraph 1628, Army Regulations, gamble and play at cards for money.

This at ....., on or about .....

**Charge.** Conduct to the prejudice of good order and military discipline.

**Specification.** In that A. B., Private, &c., U. S. Cavalry, did abuse and maltreat his horse, by needlessly and wantonly striking and beating him on the head and body.

This at ....., or about .....

**Charge.** Conduct to the prejudice of good order and military discipline.

**Specification.** In that A. B., Private, &c., being a member of the guard in charge of certain prisoners employed in working on, (*state upon what or how employed,*) was so careless and neglectful of his duty that one of said prisoners, to wit C. D., &c., was enabled to make his escape.

This at ....., on or about .....

#### UNDER ARTICLE 65.

**Charge.** Breach of arrest, in violation of the Sixty-fifth Article of War.

**Specification.** In that A. B., Captain, &c., having been duly arrested and confined in his quarters, by order of his commanding officer, Colonel C. D., &c., did, before being set at liberty, or having his limits enlarged, by his said commander or other competent authority, break and leave his said arrest and confinement, and proceed to assume command of and to drill his said company.\*

This at ....., on or about .....

#### UNDER ARTICLE 68.

**Charge.** Failing to make report of a prisoner, in violation of the Sixty-eighth Article of War.

**Specification.** In that A. B., Second Lieutenant, &c., being officer of the guard, and having had committed to his charge, as such, a certain prisoner, to wit one C. D., &c., did wholly fail, within twenty-four hours after such commitment, or after being relieved from his guard, to make to his commanding officer the report in regard to such prisoner required by the said Article.

This at ....., on or about .....

---

\* See a case of breach of arrest, thus committed, in G. O. 25, A. & I. G. O., Richmond, 1862. The officer was convicted and cashiered.

## UNDER ARTICLE 69.

**Charge.** Violation of the Sixty-ninth Article of War.

*Specification.* In that A. B., Second Lieutenant, &c., being officer of the guard, and having had committed to his charge, as such, a certain prisoner, to wit one C. D., &c., did presume, without proper authority, to release the said prisoner;

*Or*—did suffer the said prisoner to escape.

This at ....., on or about .....



# XVIII.

## FORM OF A RECORD OF A TRIAL BY A GENERAL COURT-MARTIAL.

PROCEEDINGS OF A GENERAL COURT-MARTIAL, in the case of First Lieutenant ..... , convened by the following Order :—

Special Orders } HEADQUARTERS, DEPT. OF ..... ,  
No. .... } ..... 1886.

A General Court-Martial is appointed to meet at ..... at 10 o'clock A. M., on Monday, ..... 1886, or as soon thereafter as practicable, for the trial of First Lieutenant ..... , and such other persons as may be brought before it.

### DETAIL FOR THE COURT.

1. Lieutenant Colonel .....
2. Major .....
3. Captain .....
4. Captain .....
5. First Lieutenant .....

Captain .....

Judge Advocate.

A greater number of officers than those named cannot be assembled without manifest injury to the service.

The travel required by this Order is necessary for the public service.

By command of Brigadier General .....

Assistant Adjutant General.

## FIRST DAY.

Pursuant to the foregoing Order, the Court assembled at the place, date, and hour therein specified. Present the following Members:—

Lieut. Col. ....  
 Major .....  
 Captain .....  
 Captain .....

The Judge Advocate, Captain ....., and the Accused, First Lieutenant ....., were also present.

There being no quorum, the members present adjourned to ..... at ..... o'clock A. M.

## SECOND DAY.

Pursuant to the foregoing Order and to adjournment the Court re-assembled at the said place and date, at the hour of ..... o'clock A. M. Present the following Members:—

Lieut. Col. ....  
 Major .....  
 Captain .....  
 Captain .....  
 First Lieut. ....

The Judge Advocate, Captain ....., and the Accused, First Lieutenant ....., were also present.

First Lieutenant ....., the Member absent on the first day, tendered an explanation in writing of his absence which was directed by the Court to be annexed to the Record, marked "Exhibit A."

The Judge Advocate stated that he had appointed, as Reporter for this trial, Mr. ...., who, being introduced, was duly sworn by the Judge Advocate.

The Accused asked leave to introduce, as his Counsel, ....., Esq., Counsellor at Law. The Court assenting, the Counsel appeared and took his seat.

The Order convening the Court was then read by the Judge Advocate, and the Accused was asked if he objected to any of the members. He thereupon, through his Counsel, interposed a challenge to Major ....., on the ground that he had investigated the case and preferred the charges, and was to be presumed to have formed an opinion on the merits.

The challenged member, on being called upon by the President of the Court for remarks, stated that while he had in fact preferred the charges

after an examination of the evidence, he had done so officially, and did not consider that he had formed such opinion as to affect his impartiality.

After argument by the Judge Advocate and Counsel, the Court was cleared for deliberation. On the doors being reopened, it was announced by the President that the challenge was sustained.

The Accused, being asked if he objected to any other member, replied in the negative.

The Court being reduced below a quorum, the Judge Advocate was instructed to communicate the fact to the Convening Authority.

The Court thereupon adjourned to ..... at ..... o'clock A. M.

### THIRD DAY.

Pursuant to adjournment, the Court reassembled at the said place and date at the hour of ..... o'clock A. M. Present the following Members:

Lieut. Col. ....  
 Captain .....  
 Captain .....  
 First Lieut. ....

The Judge Advocate, Captain ....., and the Accused, First Lieut. ...., with his Counsel, were also present.

The Proceedings of the foregoing day were read and approved.

The following Order, detailing a new Member, was then read by the Judge Advocate.

(Insert copy of G. O. or S. O.)

The newly-detailed Member, Major ....., took his seat upon the Court.

The Accused being asked if he desired to object to said Member, replied in the negative.

The Members of the Court were then severally duly sworn by the Judge Advocate, and the Judge Advocate was duly sworn by the President of the Court;—all of which oaths were administered in the presence of the Accused.

The Accused was thereupon arraigned upon the following Charges and Specifications:—

(Insert original Charges, &c., or copy.)

To the First Charge, ("Disrespect to his Commanding Officer, in violation of the Twentieth Article of War,") and its Specifications, the Accused, through his Counsel, interposed the *Special Plea of Former Trial*,—in that he had been arraigned upon the same before a previous General Court-Martial, had duly pleaded thereto, and the proceedings had thereupon been discontinued by the United States, without fault or act of his.

The Judge Advocate replied that, immediately upon the original arraignment, the Court had been dissolved, for the reason that several of

the Members had been required for active service in the field; and he contended that, as the proceedings had been carried no farther, there had been no "former trial" in the sense of the 102d Article of War.

The fact in regard to the dissolution of the first Court being conceded, on the part of the Accused, to be as stated,—after argument had upon the Plea, the Court cleared for deliberation, and on its being reopened, it was announced by the President that the Plea was not sustained.

The Accused, through his Counsel, then *moved to strike out* the Specification to the Second Charge, ("Breach of Arrest, in violation of the Sixty-fifth Article of War,") on account of indefiniteness and uncertainty; it alleging simply that the Accused, having been confined, &c., did, without authority, "quit his confinement," without setting forth in what the offence of quitting consisted, *i. e.* where he went or what he did; so that he, the Accused, was not apprized by the Specification with what particular act he was charged, or what he was called upon to defend.

The Judge Advocate replied, and the Court was then cleared. On reopening, it was announced by the President that the Motion would be granted unless the Judge Advocate should amend the Specification by averring in what act or acts the alleged offence consisted. The Judge Advocate thereupon, by consent of the Court, amended the Specification by adding thereto the words—"by going to, and remaining for one hour at, the quarters of another officer, Captain ..... of said regiment."

The Accused thereupon pleaded to the several Charges and Specifications, as follows:—

To the 1st Specification, First Charge—Not Guilty.

To the 2d Specification, First Charge—Not Guilty.

To the First Charge—Not Guilty.

To the Specification, Second Charge—Guilty.

To the Second Charge—Guilty.

At the suggestion of a Member, the President directed all persons present as witnesses to leave the court-room and not return until severally called upon to testify.

The Judge Advocate thereupon opened the *testimony for the prosecution* by calling as a witness Captain ....., who, being duly sworn, testified, in answer to questions by the Judge Advocate, as follows:

*Question.* Do you know the accused, First Lieutenant ....., and, if so, how long and where have you known him? •

*Answer.* I do; I have known him for four years, at ....., and at .....

*Question.* Do you know his commanding officer, Colonel .....?

*Answer.* I do.

*Question.* Were you present at an interview and conversation between the Accused and his said commanding officer, at ....., on July 1st last; and, if so, what did you hear said by them or either of them?

*Answer.* I was present, and I heard the following conversation. (*The witness then details what was said.*)

Direct Examination closed.

Cross Examination by the Accused.

*Question.* How near were you to the parties at this conversation?

*Answer.* I was within about ten feet.

*Question.* How did the accused appear—excited or the reverse?

*Answer.* Somewhat excited but not violent.

*Question.* Did you consider his manner disrespectful?

The Judge Advocate objected to the question as calling for the opinion of the witness.

The Accused, by his Counsel, modified the question as follows:—

*Question.* State more precisely what was the manner of the accused.

*Answer.* His manner was decided, and, as I said, rather excited, but, apart from the words used, not especially objectionable.

Cross-Examination closed.

Examination by the Court.

*Question.* What was the manner of Colonel ..... at this conversation?

*Answer.* Short and emphatic.

The examination of the witness being closed, his testimony was read over to him, and pronounced by him to be correctly recorded.

The hour of 3 P. M. having arrived, the Court adjourned to ..... at 9 o'clock A. M.

FOURTH DAY.

Pursuant to adjournment, the Court reassembled at the said place and date and at the hour appointed. Present all the Members, to wit:

Lieut. Col. ....

Major .....

Captain .....

Captain .....

First Lieut. ....

The Judge Advocate, Captain ....., and the Accused, First Lieut. ...., with his Counsel, were also present.

The proceedings of the previous day were read and approved.

Sergeant ....., a witness for the prosecution, being duly sworn, testified as follows:

\* \* \* \* \*

The Judge Advocate then introduced, on the part of the prosecution, the *Depositions* of Corporal ..... and Private ....., taken, (in order to avoid the necessity for a continuance,) under a *Stipulation* entered into between the Judge Advocate and the Accused prior to the assembling of the Court. These *Depositions* are hereto annexed marked "Exhibits B" and "C."

The Judge Advocate announced that the prosecution was closed.

A. B., a witness on the part of the *Defence*, was then called, and, being duly sworn, testified as follows:

*Question.* What is your name, residence and occupation?

**Question.** Do you know the Accused, and where and how long have you known him?

*Answer.* I do, and I have known him for three years in San Francisco.

**Question.** Have you not been convicted of manslaughter in the U. S. District Court?

The Judge Advocate stated that he insisted on the question.

The Court, without clearing; announced that the objection of the Accused was sustained.

The Judge Advocate objected to the examination of this witness, on the ground that he was an atheist and insensible to the obligation of an oath, and proposed to interrogate him as to his religious belief.

After argument the Court was cleared, and, on its being reopened, it was announced by the President that the exception taken by the Accused was sustained.

The Judge Advocate having no other testimony to offer on the point of competency, the witness was then duly sworn and testified as follows:—

\* \* \* \* \*

Private E. F., Company ..... Regiment .. ....., a witness  
on the part of the Defence, was then duly sworn.

A Member of the Court called attention to the fact that this witness was not in full uniform or clean. The Court, through the President, directed the witness to return to his quarters, clean himself, and report again in a neat and tidy condition and in his proper uniform.

At this stage, the proceedings of the Court were disturbed by a loud and violent altercation between two enlisted witnesses in the adjoining witness-room. At the suggestion of a Member the Court was cleared for deliberation. On its reopening, the disorderly parties were brought before the Court, and called upon to show cause why they should not be punished as for a contempt according to the 86th Article of War. Having no explanation or excuse to offer, they were adjudged by the Court to be confined, each 48 hours, in the Post guard house.

The hour of adjournment, as fixed by the 94th Article of War, having arrived, the Court adjourned to meet on the following day at 8 o'clock A. M.

FIFTH DAY.

Pursuant to adjournment, the Court reassembled at the said place and date, and at the appointed hour. Present all the Members, to wit:—

Lieut. Col. ....  
Major .....  
Captain .....  
Captain .....  
First Lieut. ....

The Judge Advocate, Captain .....  
and the Accused, First Lieut. ....  
with his Counsel, were also present.

The proceedings of the previous session were read and approved.

Brig. Gen. ...., a witness on the part of the Defence, being duly sworn, testified as follows:—

*Question by the Accused.* Please state to the Court what you know of the character and services of the Accused as an officer.

*Answer.* \* \* \* \* \*  
\* \* \* \* \*

The Accused then introduced, without objection on the part of the Judge Advocate, an Official Statement of his service, as furnished from the Adjutant General's Office, and hereto annexed, marked "Exhibit D."

The testimony on both sides being closed, the Accused, by his Counsel, read to the Court the Address, hereto annexed, marked "Exhibit E."

The Judge Advocate then read an Address, hereto annexed, marked "Exhibit F."

The Court was then cleared and closed for deliberation on its judgment, and after due consideration, found the Accused, First Lieutenant ....., as follows :

Of the 1st Specification, First Charge—Guilty, except as to the words "*rudely and violently*," substituting the word *emphatically*.

Of the First Charge—Not Guilty.

Of the Specification, Second Charge—Guilty, confirming his Plea.

Of the Second Charge—Guilty, confirming his Plea.

And the Court did therefore sentence him, the said First Lieutenant ....., *To be dismissed from the military service of the United States.*

(Signature of President.)

(Signature of Judge Advocate.)

We certify that the above is a correct and true record.

.....  
(Signature of President.)

.....  
(Signature of Judge Advocate.)

(Exhibits A, B, C, D, E, F and G,—each on a separate sheet or sheets.)

### RECOMMENDATION.

The undersigned Members of the Court, in consideration of the record and services of the Accused in the late war and subsequently, as exhibited by the testimony, do recommend a commutation, by the reviewing authority, of the sentence of dismissal required to be adjudged by the court under the 65th Article of war.

.....  
.....  
.....  
.....  
(Signatures of Members.)

### PROCEEDINGS ON REVISION.

.....  
.....  
The Court reassembled, pursuant to the following Order. Present all the Members and the Judge Advocate :—

*(Insert G. O. or S. O., or other form of direction, requiring the Court to reassemble for the correction of its record by supplying a finding to the 2d Specification of the First Charge, omitted in the Record.)*

The Court thereupon proceeded to supply the omission indicated by further finding the Accused, First Lieutenant ....., as follows :—

Of the 2d Specification, First Charge—Not Guilty.

And the Court thereupon adjourned.

We certify the above to be a correct and true record.

.....  
(Signature of President.)

.....  
(Signature of Judge Advocate.)

### ACTION.

HEADQUARTERS, .....

.....  
In the case of First Lieutenant ....., the proceedings, findings and sentence are approved. In consideration, however, of the unanimous recommendation of the Members of the Court, the sentence is commuted to suspension from rank and command on half-pay for one year. The Accused is released from arrest.

(Signature.)

.....  
Brig. Gen. Commanding.



# XIX.

## FORM OF DEPOSITION, BY STIPULATION.

BEFORE A GENERAL COURT-MARTIAL, convened by Special Order  
No. ...., Headquarters Department of .....  
....., 188...

UNITED STATES

*vs.*

} Stipulation for Deposition.

It is hereby stipulated and agreed by and between the undersigned,  
.....  
the Judge Advocate of the said Court, in said case, and .....  
....., the accused party therein, that the  
Deposition of .....  
a Witness (or Witnesses) for the .....  
in said case, now at .....  
may be taken by such officer or person as may be designated by the  
proper authority upon the interrogatories hereto annexed and agreed  
upon by the said parties,\* and that said Deposition may be read as  
evidence before the Court in said case, according and subject to the  
provisions of the Ninety-first Article of War, and subject to such ob-  
jections to the answers as the rules of evidence may justify. And it is  
further stipulated and agreed that said Deposition, when complete,  
shall be transmitted to the President of said Court, and shall be first  
opened by him in the presence of the Court and of the parties hereto.

Subscribed at ..... on .....

.....  
(Official signature of Judge Advocate.)

.....  
(Signature of Accused.)

## INTERROGATORIES

To be propounded to ....., a Witness  
for the ..... in the above-mentioned  
case, according to the annexed Stipulation :

FIRST INTERROGATORY.

.....  
SECOND INTERROGATORY.

.....  
THIRD INTERROGATORY.

.....  
&c.

.....  
&c.

.....  
&c.

\* If joint interrogatories cannot be agreed upon, separate sets of interroga-  
tories and cross-interrogatories should be annexed, and the recitals in the Stip-  
ulation, etc., modified accordingly.

## THE DEPOSITION

Of ....., a Witness for the ..... in the above-mentioned case, who, being first duly sworn, makes answer to the Interrogatories appended hereto and to the foregoing Stipulation, as follows :

ANSWER TO FIRST INTERROGATORY.

.....

ANSWER TO SECOND INTERROGATORY.

.....

ANSWER TO THIRD INTERROGATORY.

.....

&c.

&c.

&c.

.....  
(Signature of the Deponent.)

## AUTHENTICATION.

STATE OF ..... }  
County of ..... } ss.

I, .....,  
a ....., duly appointed and qualified, do certify that on the ..... day of ....., personally appeared before me, ....., the Witness named in the foregoing Stipulation and Deposition, who, having been by me first duly sworn, made response to the annexed Interrogatories in words and figures as in the appended answers set forth and contained, and further, that he thereupon subscribed the said Deposition in my presence.

[Seal, if any.]

.....  
[Signature of the Notary, Justice of the Peace,  
or other qualified official, by whom the oath  
was administered.]

.....

I, ....., the officer designated and directed by ..... to cause to be taken the deposition of the within-named ....., do certify that the same was duly made and taken under oath as hereinbefore set forth and contained.

.....  
(Official signature of officer.)

## XX.

### SUBPÆNA FOR CIVILIAN WITNESS.

UNITED STATES  
vs. } Subpœna.  
.....

The President of the United States, to ..... Greeting:

You are hereby summoned and required to be and appear in person, on the ..... day of ....., 18..., at ....., before a General Court-Martial of the United States, (convened by Special Orders No. ...., Headquarters, Department of ..... of ....., 18...) then and there to testify and give evidence as a witness for the ..... in the above-named case. And have you then and this precept.

Dated at ....., on ....., 18...

(Official signature of Judge Advocate of the Court.)

### SUBPÆNA DUCES TECUM.

Same as above, adding at end as follows:—

And you are hereby required to bring with you, to be used as evidence in said case, the following described documents, to wit:—

(Specify the documents or papers called for.)

### RETURN OF SERVICE OF SUBPÆNA.

(To be endorsed on Original.)

I certify that I made service of the within subpœna on ....., the witness named therein, by personally delivering to him in person a true copy\* of the same at ..... on the day of ....., 18...

(Signature.)

\* Or—a duplicate original. [If the service is made by a *civilian*, he may properly be directed by the Judge Advocate to make the return in the form of an affidavit.]

## XXI.

## FORM OF PROCESS OF ATTACHMENT OF WITNESS.

UNITED STATES  
*vs.*  
 ..... } Attachment for Witness.

The President of the United States, to ..... Greeting:

Whereas, at ....., on the ..... day of ....., 18..., a subpoena was duly personally served on ..... of ..... requiring him to be and appear in person to testify as a witness for the ..... in the above-named case, at ....., on the ..... day of ....., 18..., at ..... o'clock, ... M., before a General Court-Martial of the United States, duly convened by the order of ....., in and by Special Orders, No. ....., Headquarters, Department of ....., dated ....., 18...;

And whereas the said ..... has disobeyed and wholly failed to comply with the said subpoena;

Now, therefore, by the authority and in pursuance of Section 1202 of the Revised Statutes of the United States, you are hereby commanded and empowered to take and attach the said....., wherever he may be found within the United States, and forthwith bring him before the said General Court-Martial assembled at ..... afore-said, then and there duly to testify as a witness in said case, as in and by the said subpoena summoned and required.

Dated at ..... on ..... 18...

.....  
 (Official signature of Judge Advocate of the Court.)

## XXII.

### FORM OF RETURN TO A WRIT OF HABEAS CORPUS, ISSUED BY A STATE COURT.

[Name of the Court.]

In re

.....	}	On Habeas Corpus.
.....		Return of Respondent.

To the Honorable ....., Judge of said Court:

The Respondent in said case, Captain ....., United States Army, upon whom has been served the writ of *habeas corpus* therein issued, respectfully makes return to the same, and states to this Honorable Court that he holds the above-named ..... by the authority of the United States, as a deserter from the Army of the United States, under circumstances as follows, to wit:—

That the said ..... was, at ....., on ....., 18....., duly enlisted in the United States military service, as a private soldier of the ..... regiment of ....., for the term of five years from the said date of enlistment;

That, at ....., on ....., 18....., the said ..... deserted from said service and regiment, and did remain unlawfully absent as a deserter therefrom until his apprehension as such, as hereinafter specified;

That, at ....., on ....., 18....., the said ..... was duly apprehended as a deserter from said service and regiment by ....., and thereupon duly committed by said ..... to the custody and charge of this Respondent, then and now commanding the Post of .....

That a charge for his said desertion, a copy of which is hereto annexed, has been duly preferred against the said ....., with a view to his trial thereon by a General Court-Martial; and that it is proposed to bring him to trial thereon, without unreasonable delay, by and before a General Court-Martial convened, (*or to be convened,*) by (*specify Commander and Order if any.*)

Wherefore, without intending any disrespect to this Honorable Court, but for the reason that he is advised and believes that, under the rulings of the Supreme Court of the United States, this Court is not empowered to order the release of a prisoner held under and by virtue of the authority of the United States; and in obedience to the order of the Presi-

dent of the United States, of July 18, 1871, as set forth in par. 850 of the General Regulations for the Army of the United States, this Respondent respectfully declines to produce to this Court the body of the said ..... , deserter as aforesaid.

Dated at ..... , on ..... , 18.....

.....  
(Official signature of Respondent.)

NOTE.—If the enlistment paper of the soldier is accessible, a copy may well be annexed to the return, as may also an order of arrest, commitment, &c., (if any,) or other written evidence going to identify the soldier or illustrate his status. For a form of return by an officer commanding a Military Prison, see case of *In re Kaulbach*, published in G. O. 7, Division of the Pacific, 1885.

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### FORM OF RETURN TO A WRIT OF HABEAS CORPUS ISSUED FROM A FEDERAL COURT.

The same, in general, as in the preceding form, except as to the concluding paragraph—for which substitute the following:

In obedience, however, to the said writ, the Respondent herewith produces before this Honorable Court the body of the said ..... , for such disposition and orders as by this Court may be deemed to be legally required and appropriate.

Dated at ..... , on ..... , 18.....

.....  
(Signature of Respondent.)

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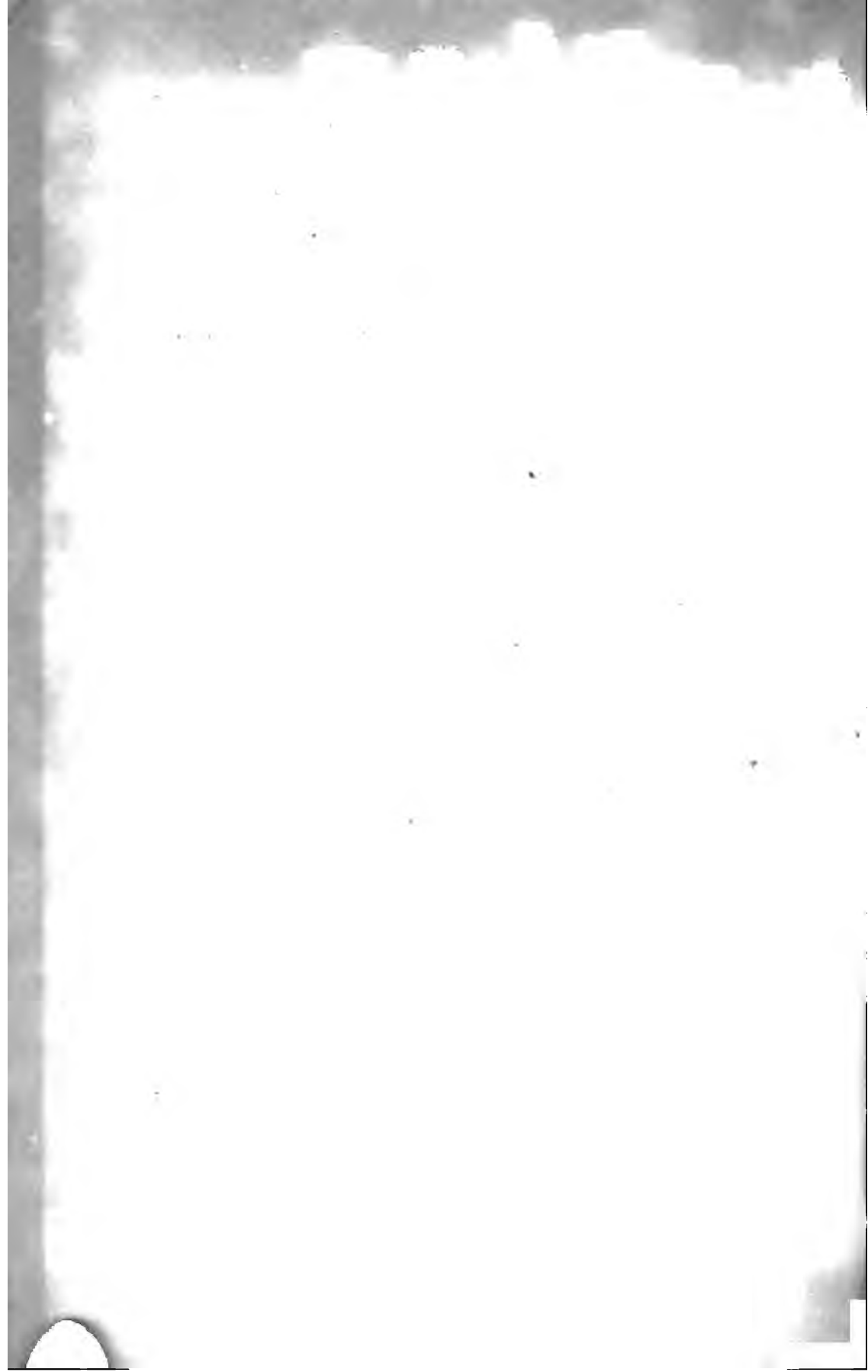
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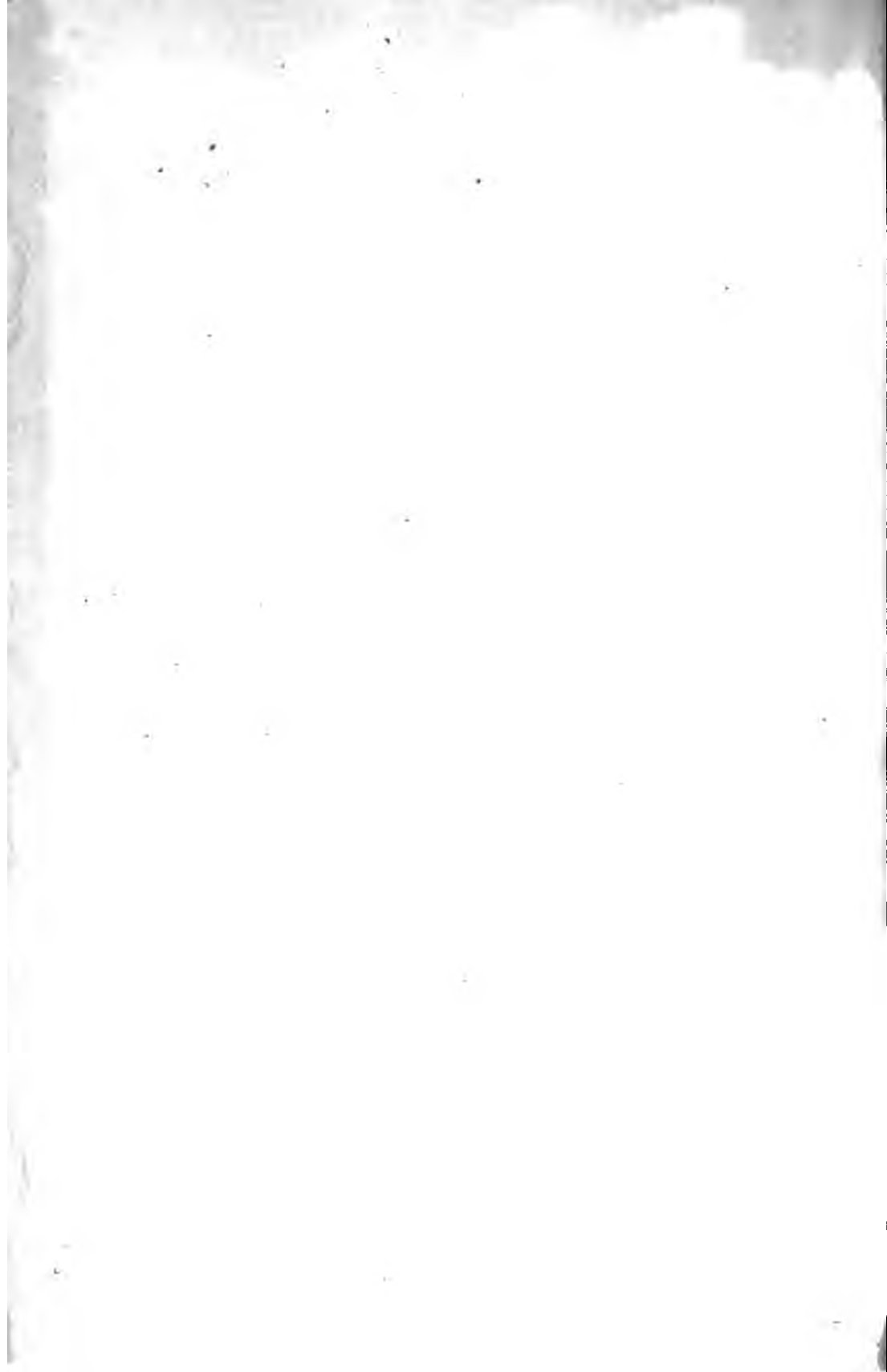
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